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INTERNATIONAL LEGAL REGIMES AND THE INCIDENCE OF INTERSTATE WAR IN THE TWENTIETH CENTURY: A CURSORY QUANTITATIVE ASSESSMENT OF THE ASSOCIATIVE RELATIONSHIP

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"Politics and morals can only be combined with positive effect, and humankind has a right to be organized in a federation or a society of free, liberal republican states." —Immanuel Kant

"The first thing I notice in looking at the state of mankind is a palpable contradiction which makes all stability impossible. As individuals, we live in the civil state, under the control of Law; as nations, each is in the state of Nature." —Jean-Jacques Rousseau

"International law is that thing which the evil ignore and the righteous refuse to enforce." —Leon Uris

I. THEORETICAL INTRODUCTION

A. AN UNCERTAIN POST-COLD WAR ERA

In the past century, 203 million combatants and civilians have perished[1] and vast fortunes have been squandered in war[2]—a dys-

1. R.J. RUMMEL, DEATH BY GOVERNMENT 13 (1994).

2. War is defined generally in international legal literature as organized violence between contending political communities. *See, e.g.*, Edoisiagbon Aikhionbare, *War and Peace in Contemporary International Relations: An Empirical Study of the Concept of Intermediacy in International Law and Politics* 2 (1991) (unpublished Ph.D. dissertation, Texas Tech University) (on file with Texas Tech University Library).

functional, yet ubiquitous, human social behavior[3] that has threatened the very existence of humankind for the last fifty-five years of nuclear terror. Although the fall of the Berlin Wall and the unopposed procession of civic revolutions in Eastern Europe triggered a potent surge of euphoria about an international future in which rule-governed[4] interdependence might become the keystone of an enduring global peace,[5] such a vision has yet to come to pass in a post-Cold War era; ethno-hypernationalism, territorial revanchism, religious hatred, and other traditional sources of disorder and misery have surged to the fore in Iraq, Bosnia, Somalia, Rwanda, Kosovo, and Chechnya.[6] Despite a decade of attempts to create a new global secu-

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3. *See id.* at 2 (noting that war has occurred in every historical age and human civilization and has always been admitted among the relations between peoples as a legitimate means of protecting rights and settling disputes).

4. *See* Alec Stone, *What is a Supranational Constitution? An Essay in International Relations Theory*, 56 REV. POL. 441, 442 (1994) (expressing the belief that international relations might experience "an unacknowledged, perhaps unconscious, return to law" after the surge of Eastern European revolutions).

5. *See* EUROPE AND AMERICA BEYOND 2000 61 (Gregory F. Treverton ed., 1990) (expressing the belief that in the last years of the Cold War the international system was becoming interdependent and consequently more peaceful, more just, more rule-governed, and more institutionalized); *see also* David Fidler, *Caught Between Traditions: The Security Council in Philosophical Conundrum*, 17 MICH. J. INT'L L. 411, 431 (1996) (noting that in the immediate aftermath of the Cold War many hoped that interstate force might recede as an instrument of state policy and that by increasing its commitment to peacekeeping and humanitarian operations, the UN collective security regime might prove capable of intervening in likely future conflicts, including the disintegration of states and civil societies).

6. In the aftermath of the Cold War and Operation Desert Storm there was a

> short period of enthusiasm for an enhanced U.N. role in maintaining world order. This euphoria, however, quickly died in the chaos of Somalia, the genocidal "ethnic cleansing" of Bosnia, and the killing fields of Rwanda. It seems to have been succeeded by a pervasive skepticism, perhaps even deeper than that at the height of the cold war . . .

John Norton Moore, *Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance*, 37 VA. J. INT'L L. 811, 815 (1997).

Indeed, the mood is perhaps far too dark to be captured by the word "skepticism." For many observers the macabre repetitions of the ghastly carnival of genocide in Bosnia and Africa a scant fifty years after the discovery of the Auschwitz and Dachau Nazi concentration camps have defiled the solemn vow of "Never again!" and laid to rest the expectation that Allied victory in WWII would serve as a turning point in human affairs. *See* Michael P. Roch, *Military Intervention in Bosnia-*

rity architecture and to establish moral, political, and legal norms, no theoretical or practical consensus has emerged in this critical and rapidly closing window of post-Cold War opportunity to govern the fashioning of a New World Order.[7] Most would agree only that the primary lesson of the past ten years is that, with few exceptions, there are as yet no invariable and consistently enforceable rules for international conduct.[8] Regrettably, if the past is once again to be the prologue, the future bodes ill. The post-Cold War era attempt to build a more peaceful era of international relations upon the rule of law is but the last of a series of similar transformative projects remembered less for their successes than for the global wars that memorialized their dramatic failures.[9]

Herzegovina: Will World Politics Prevail Over the Rules of Law?, 24 DENV. J. INT'L L. & POL. 461, 461-63 (suggesting that the lessons from Bosnia may indeed be that in some corners of the international system there may be no place for the rule of law). From this perspective, all that is certain as of the new millennium is "future Bosnias will be like buses" in that there will "always be another coming down the street" and " there is no collective security, no international will to protect the weak against the strong, and to win freedom for one's people requires neither a sound argument not a good cause but a big army." Christopher Layne, *Minding Our Own Business: The Case for American Non-Participation in International Peacekeeping/Peacemaking Operations*, *in* BEYOND TRADITIONAL PEACEKEEPING 90 (Donald C.F. Daniel & Bradd C. Hayes eds., 1995); LAURA SILBER & ALAN LITTLE, YUGOSLAVIA: DEATH OF A NATION 372 (1995). With the Dayton Accords and the Kosovo Peace Plan leaving nothing more enduring than sterile ethnic homogeneity and the substitution of victimized for victimizer in their wake, the post-Cold War era has become another cold and bitter gloaming.

7. Although the dramatic increase of United Nations ("UN") Security Council Chapter VI peacekeeping operations in the post-Cold War era sparked optimism that collective interventions could induce states to comply with formal legal proscriptions, by the latter half of the 1990s circumspect observers, in the aftermath of a series of debacles in Europe and Africa, had begun to suggest that the New World Order was being constructed upon an unsound political and moral foundation. *See, e.g.*, Fidler, *supra* note 5, at 452 (concluding that the future role of the UN Security Council is uncertain due to a lack of consensus among the competing theories of liberal internationalism, liberal realism, and liberal globalism, which guide the construction of a liberal world order).

8. Moreover, conflicts following the Cold War were fueled in part because the "law of power", rather that the "power of law", was still the primary determinant of international transactions. *See* Jeffrey Golden, *Force and International Law*, *in* THE USE OF FORCE IN INTERNATIONAL RELATIONS 194, 212 (F.S. Northedge ed., 1974) (discussing the contrast between law and power).

9. *See* discussion *infra* Part III (discussing other major transformative projects, such as the Hague Conventions of 1899 and 1907, the League of Nations, and

B. INTERNATIONAL RELATIONS AND INTERNATIONAL LAW: FIELDS DIVIDED

Although the scholarly field of international relations[10] arose early in the twentieth century with the search for the causes of war[11] and the pre-conditions for peace, the pursuit of this existential mission has failed to consign war to the ashbin of history after nearly a century of major wars. Even more disturbing when viewed prospectively, international relations, together with its sister field of international law,[12] are so fundamentally polarized by the starkly

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the UN, which respectively failed to forestall the Great War, World War II, and a host of bloody Cold War and post-Cold War conflicts).

10. The formal study of international relations as a scholarly endeavor, born in the aftermath of the Great War, was prompted in large measure by a normative desire to prevent future horrors such as had recently been experienced. However, it was not until the aftermath of World War II and the introduction of the prospect of nuclear global annihilation that international relations as a field of formal scholarly research came to be heralded as the "art and science of the survival of mankind." *See* KARL W. DEUTSCH, ANALYSIS OF INTERNATIONAL RELATIONS (1968).

11. Causal explanations for the phenomenon of war span a broad spectrum, ranging across all levels of analysis from the nature of the international system through the style of the foreign policy decisional unit to the role of the individual decision-maker. Some scholars propose that a revolution in military technology or the triggering of an imbalance in the power relationships in the international system, which produces a rational belief in the chance of political and economic success resultant from military conflict, whether singularly or in concert with allies, is the primary catalyst of war initiation; other scholars suggest that misperceptions of the intentions of potential adversaries in dyadic relationships, particularly in the presence of secret diplomacy, are a common source of war initiation. *See* GEOFFREY BLAINEY, THE CAUSES OF WAR 109, 114 (3d ed. 1988) (examining the divergent explanations for the effects of power). Still others orient state- and individual-level politico-psychological theories around the notion of a sick national character, the influence of psychotic personalities or ambitious leaders, and even an innate human love for war, which permits the release of anger, frustration, or uncertainty, and satisfies aspirations to dominance, control, prestigem and other malign constructs. *See* EVAN LUARD, CONFLICT AND PEACE IN THE MODERN INTERNATIONAL SYSTEM 25 (3d ed. 1988) (providing an exposition of the entire domain of theoretical explanations and analyses of the causes of war).

12. Hersch Lauterpacht, renowned former judge of the International Court of Justice, holds that

> [i]nternational law is the body of rules of conduct, enforceable by external sanction, which confer rights and impose obligations primarily, though not exclusively, upon sovereign States and which owe their validity both to the consent of the States as expressed in custom and treaties, and to the fact of the existence of an international community of States and individuals.

dichotomized epistemological and normative assumptions, principles, prescriptions, and proscriptions of the two preeminent contending paradigms of international law and international relations [hereinafter "IL/IR"][13]— realism and liberalism[14]—that scholars are

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HASKELL FAIN, NORMATIVE POLITICS AND THE COMMUNITY OF NATIONS 47 (1987).

As such, modern public international law traces its genesis to the period immediately preceding the formation of a community of sovereign states with the Treaty of Westphalia in 1648. Although their classic formulations of the constitutive laws of the interstate system centered principally upon the establishment of well-ordered and effective states and the incremental regulation, rather than the prohibition, of war or the institutionalization of international relations, Grotius, Pufendorf, and Vattel, the intellectual forefathers of international law, offered succor to proponents of normative visions of a more peaceful world by making manifest the emerging *opinio juris* that as mankind had the natural right to peaceful coexistence the international system of states was therefore to be steered by a normative current contrary to antecedent notions of the absolute right of states to wage war, particularly of the aggressive or preemptive and thus "unjust" varieties. HUGO GROTIUS, PROLEGOMENA 31 (1618) (W.S.M. Knight trans., Sweet and Maxwell 1922). However, early formulations of the laws of war did not specifically proscribe the phenomenon altogether, and the unilateral resort to the initiation of war to repair an injury or preserve essential rights remained an essential and legally recognized right of states quite frequently exercised well into the nineteenth century. *See* LUARD, *supra* note 11, at 47. Thus, although international law predates international relations both as a field of social inquiry and as a potential instrument whereby to transport relations between states from force to diplomacy, and ultimately to a regime of ordered and just relationships, and despite the differences in parentage and analytical optics that distinguish them, international law and international relations can properly be termed "sister fields"; both seek to explain and to varying extents prescribe the behavior of international actors while accounting for their compliance and non-compliance with rules both formal and informal.

For a closer discussion of the interrelatedness of international relations and international law as well as the utility of an interdisciplinary approach to the study of transnational issues susceptible to a legal and social science analysis, see Steven R. Ratner & Anne-Marie Slaughter, *Appraising Methods of International Law: A Prospectus for Readers*, 93 AM. J. INT'L L. 291, 292-94 (1999).

13. *See* Ratner & Slaughter, *supra* note 12, at 293-94 (offering the "IL IR" label to the interdisciplinary approach of intersecting international law and international relations to explain the behavior of international actors).

14. *See supra* note 12 and accompanying text (establishing that realism and liberalism have been and continue to be the preeminent contending fonts of explanatory and predictive power regarding state behavior as well as the cardinal points of reference on the compass of political and legal policymakers for centuries); *see also* ROBERT KEOHANE, INTERNATIONAL INSTITUTIONS AND STATE POWER 11 (1989) (equating the primary contender for the status of third paradigm of international law and international relations—institutionalism—with liberalism)

unable even to agree as to which theoretical path leads to a more peaceful international system. At this juncture, the foundations of this fundamental theoretical schism bear further examination.

1. Realist Paradigm

Realism and neo-realism, or structuralism, a slightly more economically-rooted and norm-oriented offshoot, trace their intellectual lineage from Thucydides[15] through Morgenthau[16] to Waltz[17] and Keohane.[18] Within their zone of intersection, these state-centric theories view the international system as an anarchical grouping of power-maximizing, unitary, rational states in which the principal currency is military force and from which moral concerns are relegated almost *in toto* as survival concerns preoccupy states. The realist paradigm presupposes states will always lead a precarious existence in the Hobbesian state of nature, where there is no global executive to enforce any standard of conduct and life is therefore "poor, nasty, brutish, and short."[19] Thus, the employment of unilateral military force to enhance

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("Neoliberal institutionalists accept a version of liberal principles that. . .emphasizes the pervasive significance of international institutions without denigrating the role of state power."). *See, e.g.*, NICOLO MACHIAVELLI, THE PRINCE (David Wootton ed., Hackett Publ'g Co. 1995) (recommending realism as the basis for policy prescription in sixteenth-century Florence); IMMANUEL KANT, PERPETUAL PEACE (M. Campbell Smith trans., Thomemmes Press 1992) (contending that human nature would eventually compel the peaceful creation of a "global village"). Although Marxism at one time posed a theoretical challenge to realism and liberalism, it has been emptied of much if not all of its explanatory power by the end of the Cold War, and although critical approaches to the study of international law and international relations, including feminist, dependency, and "law and economics" theories merit consideration in other fora, the greater benefits of parsimony and investigability outweigh the lesser costs of any potential reductionism in the present work, and it is believed that a narrow analytical focus on realism and liberalism will permit more productive future theoretical generation and testing than would a broader present analysis of these more recent theoretical contributions.

15. *See, e.g.*, THUCYDIDES, A HISTORY OF THE PELOPONNESIAN WAR (Rex Warner trans., 1954) (431 B.C.).

16. *See, e.g.*, HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 4-17 (Revised by Kenneth W. Thompson) (3rd ed. 1960).

17. *See, e.g.*, KENNETH WALTZ, MAN, THE STATE, AND WAR (1954).

18. *See* NEOREALISM AND ITS CRITICS (Robert O. Keohane ed., 2d. ed. 1986).

19. THOMAS HOBBES, LEVIATHAN 84 (J.C.A. Gaskin, ed., Oxford Univ. Press

survival prospects, maximize power, and increase security relative to other states is neither ephemeral nor atavistic, but is rather the fundamental and immutable fact of international relations.[20] This existential truth must be embraced before a legitimate strategy for mitigating the rigors of war can be devised.[21] In the realist construction, the anarchical international system excludes consideration of "metanorms", "autonomous institutions", or "independently viable norms of behavior,"[22] such as morality or ethics on the grounds that such principles are devoid of prescriptive worth in the calculus of state interests. The very notion, however, that there can or should be any institutional "rules of the game" in the interest of enhancing the

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1996).

20. *See* EDWARD HALLETT CARR, THE TWENTY YEARS' CRISIS, 1919-1939 109-13 (1939) (noting that since realism does not accept the normative utilitarian argument that the good of the whole takes precedence over the good of the part, states are counseled operate strictly in terms of their self-interest by maximizing and selectively employing force against other states in order to preserve individual, rather than communal, security and survival); *see also* ROBERT E. OSGOOD & ROBERT W. TUCKER, FORCE, ORDER AND JUSTICE 269-70 (1967) (arguing that it is dogmatic to insist that certain legal restraints on state freedom-of-action regarding the use of force be observed without exception where states face the possibility of extinction by other states); *id.* at 5-7 (contending that "the history of international politics gives us no reason to suppose that all major states with conflicting interests can pursue their interests without exploiting force and, occasionally, resorting to war" and that a "realistic view of political behavior . . . must reject the assumption that individuals have common interests so compelling as to obviate serious conflicts of interest among states or the need of states to support their interests through force").

21. *See* B.S. CHIMNI, INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES 26-27 (1993) (understanding that the struggle for power characterizes the essential nature of international politics and is the first step towards developing an effective strategy for mitigating the struggle for power). Moreover, the employment of unilateral force, particularly in order to balance one competing power bloc against another or to check a rogue state, may actually be functionally useful in the maintenance of systemic order. *See id.*; OSGOOD & TUCKER, *supra* note 20, at 34 (stating that the "complexity of military technology, its capacity for sudden destruction, the crucial importance of deterrence, and the accurate communication of intentions to use force" all call for a conscientiously devised strategy for the control and restraint of military power rather than leaving it to "inherent and fortuitous constraints upon the capacity of states to fight each other").

22. Stone, *supra* note 4, at 454. A Hobbesian system of normative constructive metanorms "reflect the interests, rather than restrict the discretionary power, of the sovereign; norms are legitimized by political power, not vice-versa." *Id.* at 445.

predictability and transparency of the behavior of other states collapses before the potency of the master principles of anarchy, self-help, and a security obsession.[23]

Furthermore, the realist IL/IR paradigm asserts that while states may act upon selfish considerations to cooperate, they will never inherently possess a normative interest in doing so.[24] Given the discord which characterizes the international system, a state is free to and will indeed withdraw from or violate agreements or decline to enter them if it perceives other states will gain relatively more as a result of the agreements. As a consequence, although the influence of international legal rules may frequently be felt in lower-order economic or social issue-areas where the costs of miscalculation are less immediate or threatening,[25] the more important international transactions pertaining to security and other vital national interests will remain almost entirely ungoverned by law.[26] With the structure of the international system itself—the most significant and perhaps immutable obstacle to the generation of "norm-enforcing international legal mechanisms" capable of regulating the application of interstate force[27]—international law is a "body of ethical distillation"[28] doomed

23. For the realist, rational egoism is a principle far more compelling than cooperation or association with other states, and "[i]f the major concern of statesmen of the world was to avoid conflict, we would already have a functioning international society." BART LANDHEER, ON THE SOCIOLOGY OF INTERNATIONAL LAW AND INTERNATIONAL SOCIETY 49 (1966).

24. *See* Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT'L L.J. 487, 489 (1997) (emphasizing that the realist IL/IR paradigm insists that rules of international law are used as instruments by states to pursue their own self-interest).

25. *See* Stanley Hoffman et al., *Back to the Future, Part II: International Relations Theory and Post-Cold War Europe*, 15 INT'L SECURITY 191, 197-98 (1990) (suggesting that Keohane's theory that international institutions will provide a basis for stability in post-Cold War Europe is only applicable where competition for military security is minimal and where economic issues take a higher priority).

26. *See* DAVID MITRANY, THE FUNCTIONAL THEORY OF POLITICS 154-55 (1975) (observing that movements for regional unions, such as Pan-Europa or the Imperial Crusade, were actually based on the doctrine of sovereignty, which "taught that for a nation the ultimate test of law and morals lay in an enclosed territory and not in universal principle").

27. *See* Golden, *supra* note 8, at 213 (noting that for Morgenthau the relative distribution of state military power determined whether legal, rather than political, attempts to regulate the use of interstate force would trump the resort to self-help

to serve as a "source for the manufacture of ad hoc or ex post facto justifications for decisions taken primarily on the basis of non-legal factors such as national interest, power, and economics"[29] and otherwise to remain epiphenomenal and permanently irrelevant to the conduct of the serious matters of international relations.[30] From the realist perspective, the *cordon sanitaire* of military power and political alliances ought to be drawn about practical interstate problems, lest moralism, rigidity, and absolutism accidentally slip past into the elite company of military power and flexible diplomacy—the sole instruments of effective statecraft. Worse yet, to mix too much international law with international relations, even in good faith, "invites destruction at the hands of aggressors,"[31] who do not respect its proscriptions, and increases the "probability that violence, war, defeat, death and destruction will ensue," thereby jeopardizing the future of mankind.[32]

Finally, the realist IL/IR paradigm warns that any putative international legal obligations will yield to national interests in power maximization and security gains, relative to other states in a decentralized and anarchical system. Furthermore, even where a consensus

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measures).

28. Raj Bhala, *Review of International Rules: Approaches from International Law and International Relations*, N. CAR. J. INT'L L. & COMM. REG. 737, 758 (1998) (quoting Dean Acheson) (reviewing ROBERT J. BECK, ET AL., APPROACHES FROM INTERNATIONAL LAW AND INTERNATIONAL RELATIONS (1996)).

29. Francis A. Boyle, *The Irrelevance of International Law: The Schism Between International Law and International Politics*, 10 CAL. W. INT'L L.J. 193, 198 (1980).

30. *See* Bhala, *supra* note 28, at 759 (establishing that classic realists and neorealists agree about the lack of importance of international law in affecting state behavior).

31. FRANCIS A. BOYLE, FOUNDATIONS OF WORLD ORDER: THE LEGALIST APPROACH TO INTERNATIONAL RELATIONS (1918-1922) 8 (1999).

32. Boyle, *supra* note 29, at 196. The realist location of the primary origins of war in the sociobiological nature of mankind dictates that, absent further human evolution, war will remain an inexorable and inevitable consequence of our existence upon earth. The proper task of the prudent policymaker will forever be to guard against the utopianism of peace movements while girding his nation for the next war. For a discussion of the tensions between the influence of peace movements and realist prescriptions for international governance, see Cecilia Lynch, *E.H. Carr, International Relations Theory, and the Societal Origins of International Legal Norms*, 23 MILLENNIUM J. INT'L STUDIES 589, 618 (1994).

can be developed as to what specific legal rules are operative, the vague and ambiguous language in which such rules are written will allow all signatories to read the recognition of their own national interests into the moral tenor of legal texts.[33] In sum, the realist paradigm maintains that the interest of an international society is differentiable from that of states, which will remain the chief repositor of individual loyalty and will continue to seek power and security to honor that loyalty, notwithstanding whatever international legal regime might purport to proscribe the operationalization of state interest through warfare. Thus, absent Austinian constraints on state behavior in the security issue-area,[34] if one would search in law for the truth regarding the praxis of international relations, "one ought to orient oneself in the international legal system by reference to [state practice] rather than primarily by reference to statutes, treaties, venerable custom, and judicial and arbitral opinions."[35]

2. *Liberalist Paradigm*

The liberalist IL/IR paradigm springs from classical liberalism.[36]

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33. *See* MORGENTHAU, *supra* note 16, at 232. For Morgenthau and other realists, the extent of state obligation to obey international legal rules is moral in nature, and as much of international law is morally neutral or even morally negative, states can be obliged, as a matter of self-interest and morality, to violate such laws. *See id.*; Golden, *supra* note 8, at 210 (noting that states obey "not law which they are forced to observe, but law to which they consent").

34. *See* FAIN, *supra* note 12, at 47.

35. W. Michael Reisman, *International Incidents: Introduction to a New Genre in the Study of International Law, in* INTERNATIONAL INCIDENTS: THE LAW THAT COUNTS IN WORLD POLITICS 3, 5 (W. Michael Reisman & Andrew R. Willard eds., 1988). For the most obtuse realists, international law is not law *strictu sensu*, as there is no effective means of coercion at the level of the international system; even those realists who accept the notion that international law is a form of law hold it to be the law of the lowest common denominator on the basis of the perception that it operates horizontally rather than vertically, proceeds via coordination rather than through subordination and superordination, and binds states only to the degree that consensus is maintained. For a discussion of disparities between municipal and international law with respect to the issues of control and consent, see Aikhionbare, *supra* note 2, at 7.

36. *See* Fidler, *supra* note 5, at 430 (stating that liberal internationalism differs from classic liberal theory in that it emphasizes international organization and recognizes the role of power in international relations); *see also* Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513, 514 (1997) (arguing that the elements of liberal theories of international

After undergoing normative and analytical reconceptualizations to incorporate considerations of the causal influences of substate actors on patterns of international relations, the liberalist IL/IR paradigm has, in recent decades, been recast under the labels of neoliberalism, globalism, multilateral institutionalism, and liberal institutionalism.[37] In contrast to the realist paradigm, the liberalist IL/IR paradigm commences from the positivist proposition that while economic interdependence renders war prohibitively costly,[38] anarchy remains a secondary characteristic of the international system. Insecure states are compelled to attempt to limit and channel the behavior of other states in the direction of mutual gains and benefits through a combination of concrete bargains and diffuse legal constraints.[39] Next, the

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relations flow out of the political theory and philosophy of liberalism).

37. *See* Bhala, *supra* note 28, at 775 (arguing that realists fail to account for the fact that states are no longer able to act freely of their own accord, but are influenced by special interest groups existing within the state itself). Although for purposes of the present study the various boundaries between the various strains of liberalist thought will be conflated to produce a conceptually simple and readily manipulable liberalist paradigm, this is not to suggest that there are no shades of difference between the several schools of liberal thought. The globalist strain of liberalism (or "liberal globalism") suggests that economic interdependence stirs the rational processes of globalization, whereby markets, laws, polities, and peoples are internationalized and interlinked for the common weal, rendering collective security and the balance of power as mere "instrumental devices" and "diplomatic fossils." Fidler, *supra* note 5, at 444-45. In partial contrast, liberal realism suggests that while international organization can be useful in establishing and maintaining the balance of power and in extending the democratic peace between liberal republics, the primary currency in international relations remains not capital but military power. *See id.* at 436. Liberal internationalism, as something of a middle ground construction, recognizes the importance of power but advocates a cooperative, coordinated approach to international relations through international organization. *See id.* at 447-48. Despite the importance of these intraparadigmatic nuances, the present theory consigns them to a successive iteration. For those seeking to find their way through the bewildering maze of theoretical labels that proliferate in the field of international relations, see ROBERT KEOHANE, INTERNATIONAL INSTITUTIONS AND STATE POWER (1989) (offering distinctions between liberalist schools of thought).

38. *See* ROBERT W. GILPIN, WAR AND CHANGE IN WORLD POLITICS 22-25 (1981) (proposing that a change in the relative costs of security and welfare objectives usually causes a corresponding change in the foreign policy of the state or tends to induce a change in state behavior).

39. *See* Anne L. Herbert, *Cooperation in International Relations: A Comparison of Keohane, Haas and Franck*, 14 BERKELEY J. INT'L L. 222, 227 (1996) (noting that for liberalists such as Robert Keohane the realist IL IR paradigm can-

liberalist paradigm appends a normative proposition that the purpose of international relations should not be the hoarding of power as a defensive shield against anarchy, but rather the promotion of universal protection of and respect for human liberties and rights.[40] While the founding of a Kantian global village[41] predicated on supranational sovereignty and perpetual peace emerges from the work of the more utopic liberalist scholars,[42] most liberalist scholarship addresses the limitation of state sovereignty and the development of conditional interstate cooperation along more flexible Grotian lines.[43] Such liberalist scholarship proposed the implementation of formal institutions,[44] such as international organizations with powers to enforce communal obligations against defectors, or the convergence of interests that

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not explain the empirically-verified process whereby shared economic interests created an international harmony of interests, which in turn generated a demand for international rule-based institutions that states voluntarily agreed to join).

40. Fidler, *supra* note 5, at 413 (commenting that liberalism "is about protecting individual liberty at home and fostering individual liberty overseas").

41. *See* KANT, *supra* note 14, at 192-96 (suggesting that liberal republican states will exercise restraint and manifest peaceful intentions in their international relations due to their respect for individual liberty, and that ultimately a zone of peace will encompass the entire "global village").

42. *See* FRIEDRICH KRATOCHWIL, RULES, NORMS, AND DECISIONS 65 (1989) (noting that the most idealistic of liberalists hope to overcome the dichotmoy between domestic, law-governed society and international, anarchic society to create the preconditions for world government); *see also* NORMAN ANGELL, THE GREAT ILLUSION: A STUDY OF THE RELATION OF MILITARY POWER IN NATIONS TO THEIR ECONOMIC AND SOCIAL ADVANTAGE 1-14 (1913) (establishing the soon-to-be disproved argument that given the destructive potential of Great War-era technology human beings would soon abolish warfare as an instrument of national policy).

43. *See* CHIMNI, *supra* note 21, at 204-05 (stating that state sovereignty is limited in that international institutions like the International Court of Justice are needed to resolve conflicts between states); *see also* GROTIUS, *supra* note 12, at 13-14 (suggesting that the ability of states to control transborder transactions and to maintain dominance over all aspects of the international systems through the use of force is limited, and that domestic elites are the primary level of analysis in international relations).

44. *See* Herbert, *supra* note 39, at 223-24 (noting that the liberalist IL/IR paradigm generally understands institutions to be sets of transnational rules and practices that constrain state behavior and shape the future expectations of international actors; as such institutions can be formal international organizations consisting of state parties or informal institutions manifested through state behaviors); *see also* Fidler, *supra* note 5, at 430 (observing that for liberal internationalists formal institutions are vital to the creation of a peaceful international order).

produces multilateral interstate cooperation in specific issue-areas[47] on the basis of shared norms and principles,[48] which result from and influence domestic changes in attitude.[45] In sum, the liberalist IL/IR paradigm insists that, although mankind is not immediately perfectable, a more peaceable international order—in which political outcomes are not simply a function of military power,[46] and from which war eventually recedes as an instrument of state foreign policy. Such an international order would require the restructuring of values and norms[49] to incorporate more peaceful foundations and legal regimes[50]

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45. Anthony Clark Arend, *Do Legal Rules Matter? International Law and International Politics*, 38 VA. J. INT'L L. 107, 120 (1998).

46. Norms can be described as "standards of behavior that can alter the calculations of costs and benefits and constrain the options available to policy makers" in the conduct of international relations. Ann Florini, *The Evolution of International Norms*, 40 INT'L STUD. Q. 363, 365 (1996). Some of the most potent of such norms include proscriptions against slavery, genocide, torture, piracy, and extrajudicial capital punishment. These are classified as *jus cogens* norms, peremptory norms "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, 8 I.L.M. 679.

47. *See* J. Martin Rochester, *Rise and Fall of International Organizations as a Field of Study*, 40 INT'L ORG. 777, 788-89 (1988) (recognizing that integration through the growth of communications, trade and other transactions among people may lead to changes in attitudes). The focus on the process whereby institutions influence cooperative trends in international relations is central to much liberalist scholarship. *See, e.g.*, Herbert, *supra* note 39, at 228-30.

48. *See* Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 MICH. J. INT'L L. 345, 369 (1998) (suggesting that the progressive development of institutions, policies, and laws that prevent war or, *de minimis*, ameliorate its consequences is the teleological foundation of the liberalist IL/IR paradigm).

49. *See* Lynch, *supra* note 32, at 590 (defining norms for purposes of the liberalist IL/IR paradigm as "intersubjectively understood and legitimated guides to behavior" that, while not necessarily causal in character, "provide reasons and justifications for actors . . . to choose to behave in particular ways").

50. *See* Herbert, *supra* note 39, at 224 (explaining that within the past quarter-century, the liberalist paradigm of IL/IR has come to employ the term "regime" to define and explain emerging patterns of social conduct and cooperation, both formal and informal, in international and transnational relations). The most comprehensive definition of the analytical concept maintains that regimes are

> sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of inter-

progressively developed to fuse new social purposes with the power of national and transnational actors.[51]

II. RESEARCH DESIGN

A. STATEMENT OF PURPOSE

Despite the sordid history of the twentieth century and the recent horrors in Europe and Africa,[52] the international system remains unsettled.[53] While theoretical debates are frequently a source of a pro-

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national relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.

Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, *in* INTERNATIONAL REGIMES 2 (Stephen D. Krasner ed., 1983).

Furthermore, the definition of regimes is flexible enough to permit discussion of behavioral regimes, identified as persistent patterns of interactions, or as concrete regimes, constituted as formal international organizations. *See* Stone, *supra* note 4, at 448 (noting that regimes can either be a community based on norms, or a constitutional regime, which is a formal body that specifies how norms should be applied).

51. While the liberalist IL/IR paradigm does not suggest that law is necessarily the paramount determinant of state behavior, for liberalists law adds an "important increment of interest in performing obligations," whereby nations modify their behavior significantly to conform to a legal regime. LOUIS HENKIN, HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY 253 (1968).

52. *See supra* note 6 and accompanying text (describing the resurgence of genocide in the Post-Cold War era); *see also infra* at Part III (setting forth the history of conflict in the pre-Cold War era).

53. At the height of the Cold War, when the specter of imminent nuclear holocaust haunted the world, several commentators suggested that with international law "now as before . . . showing on its body of rules all the scars inflicted by the international state of war" and an international system ripe with "multiple minidramas that always threaten to become major catastrophes" the "old liberal dream of a world ruled by law" would have to yield to the "new requirements of moderation . . .[,] a downplaying of formal law in the realm of peace-and-war issues, and an upgrading of more flexible techniques, until the system has become less fierce." INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK xviii (Lawrence Scheinman & David Wilkinson eds., 1968). Despite the absence of a nuclear threat as compelling as that which prevailed in 1968, the upheavals of the post-Cold War era and the numerous unauthorized uses of interstate force have arguably injected analogous uncertainties as to the efficacy of formal rules of inter-

ductive dialectic, adherents of both the realist and liberalist paradigm of IL/IR ostensibly quest after the truth. Whatever their theoretical allegiance and normative approach,[54] most scholars in the post-Kosovo era would agree that the international system is currently subject to contestation in a political and moral atmosphere where "international legal rules appea[r] impotent and international organizations [seem] incapable."[55] More importantly, proponents of both paradigms likely share the conviction that so long as a fundamental theoretical schism over how best to constrain state behavior in the interests of fostering stability and peaceful change persists, the would-be architects of a more peaceful post-Cold War international system—regardless of whether international legal rules are the appropriate mechanism for restraining the use of interstate force—will be deprived of the clear and consistent guidance of both the legal and scientific academies on whatever road leads mankind ultimately to a normatively more attractive international future.[56] It is the purpose of

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national law in the resolution and prevention of interstate and intrastate conflicts into the contemporary international system. *See id.*

54. Although realist scholarship tends to focus on the structure of the international system, particularly in terms of the distribution of power, rather than on the normative and societal underpinnings of a broad host of transnational transactions, for many realists normative considerations are an inherent part of their philosophical approach. *See generally* MORGENTHAU, *supra* note 16; *see also* REINHOLD NIEBUHR, CHRISTIANITY AND POWER POLITICS (1940) (articulating and defending the moral constituents of realist American power and policy).

55. *See* Arend, *supra* note 45, at 107-08 (noting that despite the further codification and refinement of international law it has not become more relevant to the progressive development of international relations); *see also* INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at xviii-xix (suggesting that war will remain the central phenomenon in international relations for the foreseeable future).

56. *See* John K. Setear, *An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law*, 37 HARV. INT'L L.J. 139, 139 (1996) (stating that international law and international relations are fields divided by their commonalities as much as by their differences and thereby exist to a large extent "in serene isolation" from one another). While this intertheoretical and interdisciplinary impasse, intruding as it does at a critical juncture in the evolution of the international system, is disheartening, it nevertheless admits of opportunities for resolution by way of a joint research agenda as the basis for policy prescriptions. As Slaughter insists,

> [i]f social science has any validity at all, the postulates developed by political scientists concerning patterns and regularities in state behavior must afford a foundation and framework for legal efforts to regulate that behavior. For in-

this project to help bridge this theoretical divide and contribute in some small measure to the evolution of the international system by examining the extent to which international law (the primary tool of the liberalist paradigm) has ameliorated the scourge of war (the primary currency of the realist paradigm).

B. EXPERIMENTAL HYPOTHESIS

The proposition that all states share an interest in security does not compel the inference that states will instantly abandon their selfish interests in favor of an international society of peace-loving and thus secure states. Similarly, the proposition that the prevention or regulation of interstate armed force is crucial to making the next centuries less sanguinary than the past does not inevitably yield the conclusion that states will agree as to the formal rules upon which such a regulatory mechanism should be constructed and enforced. While it is impossible within the present spatial and temporal limits to offer and test an empirically-grounded metatheory of the social phenomenon of war, this limited theory-building project, concededly reductionist[57]

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stance, if it could be reliably shown that a great-power condominium was the best guarantee of international peace, then international law and organization should accommodate and support an arrangement that confers special privileges on a group of great powers. On the other hand, if the prospects for peace hang on some other set of state characteristics, then international security organizations and norms designed to regulate the use of force should be reshaped accordingly. From the political science side, if law—whether international, transnational or purely domestic—does push the behavior of states toward outcomes other than those predicted by power and the pursuit of national interest, then political scientists must revise their models to take account of legal variables.

Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205, 205-06 (1993).

Nevertheless, there will always be those for whom ideological commitments to particular theoretical positions are more compelling than the dispassionate, objective search for truth and intertheoretical and interdisciplinary consensus. For him or her upon whom the label policy advocate fits more properly than does the title scholar, "the theory of international relations to which [he or she] . . . subscribes will influence, if not determine, that person's perception of the relationship of legal rules to politics." Arend, *supra* note 45, at 109.

57. Each of the levels of analysis in international relations, including the properties of the international system, national attributes of societies, political features of governance regimes, governmental decision structures, foreign policy decisional units, and personal characteristics of leaders bears consideration in any fully-

and positivist[58] in this iteration, shall employ quasi-quantitative methods to test the experimental hypothesis that the realist IL/IR paradigm better explains and predicts international relations. Thus, the formal international legal regimes and institutions that have purported to govern the use of interstate force have been, at best, tangential to the genesis, conduct, and conclusion of wars in the inter-

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articulated theory regardless of the paradigmatic or epistemological approach. However, many mainstream theories,

> whether convergent or divergent on the relevance and function of international law and institutions . . . share a set of fundamental assumptions. Theirs is a "top-down" analysis, beginning with standard Realist assumptions that unlike entities (states) can be treated as like for analytical purposes, by virtue of the constraints and incentives imposed by the international system. Whether that system includes patterns of institutionalized behavior, shaped and conditioned by law and international organizations, is a secondary question. At its core, the model of "how nations behave" is a "black box" or "billiard ball" model of the international system, in which states are regarded as identical in form and function and opaque with regard to domestic regime type and state-society relations.

Slaughter Burley, *supra* note 56, at 226.

Nevertheless, in constructing any theory of complex processes, particularly those involving human agency, it is inevitable that a degree of reductionism will be employed. *See* A.J.R. GROOM & MARGOT LIGHT, CONTEMPORARY INTERNATIONAL RELATIONS: A GUIDE TO THEORY 76 (1994) (noting that behavioralist approaches must sacrifice generalizability in the interests of investigability). The present study seeks to resist reductionism to the extent possible while retaining parsimony and investigability, but to this end has elected to privilege the latter considerations. Thus, while the individual decision-maker at the apex of the foreign policy decisional unit may ultimately be the locus of state behaviors in international relations, and although subnational actors (ethnic and indigenous groups), transnational actors (multinational corporations), and supranational actors (the UN) are becoming increasingly important determinations of international relations, the present theory treats states themselves as unitary decision-makers and, regrettably, discounts inputs from other levels of analysis as well from other fields, including, *inter alia*, political psychology and other cognitive sciences, economics, political philosophy, and ethics. See J. David Singer, *The Level of Analysis Problem in International Relations*, 14 J. WORLD POL. 77, 77 (1961) for a general discussion of the level of analysis problem in international relations research.

58. *See* NEOREALISM AND ITS CRITICS, *supra* note 18, at 281 (citing the Four Tenets of Positivism propounded by Richard Ashley). Ashley suggests that: (1) there are objective scientific causes of events; (2) science can produce technically useful knowledge that is (3) value neutral; and (4) the truth can be empirically tested). Although subjectivity and ideological commitments can render the positivist vision void, as Ashley recommends, all efforts shall be undertaken to prevent the intrusion of either of these diversionary variables. *See id.*

national system for the period 1899-1999.[59]

1. Conceptual Definitions

a. War

When the concept "war" is defined simply as organized violence between contending political communities,[60] it can be located at every point on a spectrum ranging in intensity from sporadic acts of low-scale terrorism to mass genocide,[61] and identified as occurring not only across but within the boundaries of a single state. However, a narrower definition of the phenomenon, adopted in the interests of parsimony and investigability, limits consideration to militarized interstate disputes[62] in which one state used military force against another state,[63] and in the process produced no less than one thousand

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59. The null hypothesis shall be a distillation of the liberalist paradigm: international law is no longer hortatory or aspirational as to the high politics of foreign policy, and that under its influence the international system can no longer be characterized primarily by conditions of anarchy and state self-help.

60. *See* text accompanying *supra* note 2 (defining the concept of "war"). Several commentators, developing this rather broad definition of war still further, suggest that the complex relations between actors in the contemporary international system are conducted in a state of intermediacy in which war and peace are but interdependent and interrelated aspects of the same holistic phenomenon (e.g., the U.S.-U.S.S.R, Arab states-Israel, China-Taiwan, etc.). *See, e.g.*, Aikhionbare, *supra* note 2, at vii.

61. *See* Louis Henkin, *Conceptualizing Violence: Present and Future Developments in International Law*, 60 ALB. L. REV. 571, 571 (1997) (explaining that the term "violence" is the use of force between states, and ranges from military hostilities to genocide, terrorism and rape).

62. *See* Charles S. Gochman & Zeev Maoz, *Militarized Interstate Disputes, 1816-1976*, *in* MEASURING THE CORRELATES OF WAR 193, 194-95 (J. David Singer & Paul F. Diehl eds., 1990) (citing Grochman and Maoz in defining "militarized interstate dispute" as a "set of interactions between or among states involving threats to use military force, displays of military force, or actual uses of military force[,]" which are "explicit, overt, nonaccidental, and government sanctioned").

63. The actual use of military force by one state in combat operations against the military forces of another state is central to the conceptual definition of war in the present study. Warnings or threats to use or display force, maneuvers designed to impose blockades, mobilizations, seizure of material or personnel of another state, or any other use of military assets that does not produce combat with the forces of another state, although hostile actions, do not rise to the requisite level of intensity to meet the narrow definitional requirements. *See id.*

battlefield casualties per year in which combat occurred.[64]

b. International legal regimes

Although it is beyond the scope of the present work to tour the entire corpus of regimes theory,[65] a theoretical sketch is in order. In brief, international regimes, while they are the epicenter of much of liberalist scholarship, are not merely an appendage of the liberalist IL/IR paradigm. Rather, regimes emerge for a variety of reasons.[66] Provided that a common pattern of economic and political interests[67] emerges in a given issue-area of international relations,[68] even nar-

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64. *See* Aikhionbare, *supra* note 2, at 93-94.

65. *See generally* Krasner, *supra* note 50 (surveying the boundaries of regimes theory). A survey of regimes literature reveals that the concept "regime" has been stretched to include not only formal institutions with treaty-based principles, norms, rules, and procedures, but also tacit forms of cooperation. Thus, a comprehensive discussion of regimes theory would require extensive analysis of all persistent forms of state interaction and cooperation, a task far beyond the scope of the present work. Primary approaches to the study of regimes include structuralism (which suggests that hegemonic stability is based upon on the structural distribution of power and that regimes are epiphenomenal and merely declaratory of what international relations should be), institutionalism (often treated as a third paradigm of IL/IR as it suggests that formal institutions modify the organizing principle of anarchy by diffusing information and ameliorating the conditions of conflict), functionalism (which holds that regimes function to aid rational states in securing objective interests), game theory (which seeks to determine the preference orderings that will yield cooperation), and cognitive theory (which maintains that regimes evolve and become more effective as actors learn).

66. International regimes are created to serve a broad array of interests, including,

> to protect the interests of the state and other powerful members of society; to deter, suppress, and punish undesirable activities; to provide for order, security, and justice among members of a community; and to give force and symbolic representation to the moral values, beliefs, and prejudices of those who make the laws.

Ethan A. Nadelmann, *Global Prohibition Regimes: The Evolution of Norms in International Society*, 44 INT'L ORG. 479, 480-81 (1990).

67. Although "religious belief, humanitarian sentiments, faith in universalism, compassion, conscience, paternalism, fear, prejudice, and compulsion to proselytize" can motivate their formation and development, international regimes invariably reflect the political and economic interests of the dominant actors in the international system. *Id.* at 480.

68. *See* ROBERT KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY 60-63 (1984) (noting that the scope of regimes

rowly self-interested states, "unmoved by idealistic concern for the common goals or ideological commitments of a certain pattern of international relations,"[69] may come to accept certain behavioral injunctions[70] in exchange for the benefits that regimes can provide.[71] These benefits include, *inter alia*, a forum for negotiation and the infrastructure for rule enforcement, as well as reduced uncertainty as to the practices of other actors and the outcomes of those practices.[72] Moreover, although a moral consensus has indeed influenced the formation of certain regimes,[73] state self-interest remains the glue that constitutes regimes. To overcome the destructive forces of entropy and anarchy and the tendencies toward defection and free-riding[74] a regime, no matter how normatively motivated, state self-interest must complement and even serve the political and economic interests

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corresponds to the boundaries of issue-areas, which in turn are "sets of issues that are dealt with in common negotiations and by closely coordinated bureaucracies.").

69. *Id.* at 78.

70. *See id.* at 59 (noting that all four elements of a regime—principles, norms, rules, and procedures—impose behavioral injunctions of greater or lesser specificity upon states).

71. *See* Lynch, *supra* note 32, at 591 (observing the benefits of following rules and regimes in promoting "*status quo* stability, a just distribution of resources, economic prosperity. . . or an international peace that may be based on one or a combination of other goods.").

72. *See* Oran R. Young, *Regime Dynamics: The Rise and Fall of International Regimes, in* INTERNATIONAL REGIMES, *supra* note 50, at 113 (finding that the conjunction of converging expectations and recognized patterns of behavior and practice is the distinguishing feature of regimes).

73. *See* Nadelmann, *supra* note 66, at 479 (noting that global prohibition regimes against slavery, genocide, torture, and other violations of *jus cogens* norms have drawn upon an evolutionary transnational moral consensus regarding the evils of these particular activities).

74. *See* Bhala, *supra* note 28, at 766-67 (stating that regime strength is in direct proportion to the coherence of its principles, norms, rules, and procedures, and can be expressed in terms of the degree to which state behavior is consistent with these behavioral injunctions); *see also* KRATOCHWIL, *supra* note 42, at 62 (noting that the "strength of a regime does not seem to result from the logical neatness of relating rules and higher principles to each other but rather from deference to authoritative decision" or by the adherence to norms); Nadelmann, *supra* note 66, at 525 (recognizing that when powerful states persistently refuse to conform their behavior to the particular injunctions of a regime, the existence of that regime is threatened).

of the hegemonic and regional powers.[75] Nevertheless, whatever its inspiration, a regime can exist as something more than an epiphenomenon[76] in any given issue-area, including collective security,[77] "as long as international state behavior results from unconstrained and independent decisionmaking."[78] On the other hand, "[i]f patterns of international interactions can be satisfactorily analyzed in terms of power, then utilizing regimes as explanatory devices become superfluous."[79] In other words, only to the extent that it can be shown that

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75. *See* Stone, *supra* note 4, at 453 (noting that regimes are created and maintained only to the extent they reflect the interests of the dominant states as to the issue-areas the regimes are meant to address).

76. *See* Krasner, *supra* note 50, at 1-5 (stating that for scholars who identify more with the realist than the liberalist paradigm, basic power relationships, rather than principles, norms, rules, or decision-making procedures, are determinative of international relations and thus regimes are merely epiphenomenal to state behaviors and outcomes).

77. Although the realist paradigm of IL/IR suggests that collective security is an issue-area *sui generis* given conditions of anarchy, uncertainty, and national interests in power maximization relative to other states that complicate convergence of interests, realism does not *ipso facto* exclude collective security. Collective security is an issue-area susceptible to regime development as norms underpin and structure collective security, even if they are more opaque and less robust than the norms that undergird other issue-areas. *See* KRATOCHWIL, *supra* note 42, at 187. Indeed, Robert Jervis defines a security regime as "those principles, rules, and norms that permit nations to be restrained in their behavior in the belief that others will reciprocate." Robert Jervis, *Security Regimes, in* INTERNATIONAL REGIMES, *supra* note 50, at 173. Nevertheless, realists insist that security regimes, though theoretically possible even under conditions of anarchy, are more difficult to construct and maintain than regimes in other issue-areas for the following reasons: (1) security is more competitive than other issue-areas; (2) securing one's own interests harms or menaces other states; (3) stakes, which include survival, are higher in security than in other issue-areas; and (4) detection of the actions of other states is more difficult in security than in other issue-areas, which complicates evaluation of relative security relationships. *See id.* at 174.

78. *See* Jervis, *supra* note 77, at 174. In other words, a functional process of mediation between state power and political outcomes is determinative of whether a regime can be said to exist.

> If the patterns of international relations can be explained by the distribution of military and economic power among the states, the concept of regime will not be useful. But if the connections between outcomes and national power are indirect and mediated, there is more room for choice, creativity, and institutions to restrain and regulate behavior, and to produce a regime.

Id.

79. Friedrich Kratochwil, *Norms and Values: Rethinking the Domestic Anal-*

international legal regimes provide incentives or constraints that cause outcomes significantly different from those predicted by the distribution of state military power (i.e., the most powerful states always accomplish their interests through the application of interstate force against weaker states) can it be posited that international legal regimes are relevant to the incidence of interstate war.

Although not all international law is positive in its origins and progressive development,[80] and although not all positive laws are

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ogy, 1 ETHICS & INT'L AFF. 135, 137 (1987). The realists postulate that the more effective method for organizing interstate relations so as to obtain the benefits of cooperation is the practice of bilateral bargaining with other state and non-state actors. *See* Susan Strange, *Cave! Hic dragones: A Critique of Regime Analysis*, *in* INTERNATIONAL REGIMES, *supra* note 50, at 337, 354 (noting the relevance of bargaining outside the scope of bargains between states). Thus, to the extent that bilateral treaties and agreements explain more about patterns of war and peace in the international system than do international legal regimes, regimes can be said to be epiphenomenal. *See id.*

80. Traditional sources of international law include only the following:

> (i) international conventions, whether general or particular, establishing rules expressly recognized by states; (ii) international custom, as evidence of a general practice accepted as law; (iii) the general principles of law recognized by civilized nations; and (iv) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of law.

Statute of the International Court of Justice, 59 Stat. 1055, U.N.T.S. 993 (1945), at art. 38.

Although critics of the cumbersome traditional sources doctrine are frustrated that it does not permit for more modern forms of rulemaking such as codes of practice, recommendations, resolutions, or declarations of principles, traditional sources and consent doctrines remain in force and provide only limited exceptions to the principle that for a proscription or prescription to legally bind a state it must be the positive and explicit creation, via treaty, of the state it purports to bind. *See* Michael Akenhurst, *Custom As A Source of International Law*, 47 BRIT. Y.B. INT'L L. 18 (1977) (defining customary international law and outlining the process of its crystallization and recognition as binding by states); L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE (PEACE) 26 (H. Lauterpacht ed., 8th ed., 1955) (describing the evolution of customary international law).

This is not to suggest that customary international law does not play an important, perhaps even outcome-determinative, role in certain state decisions as to the application of interstate force. Much of international humanitarian law ("IHL"), a subset of the international law of war, is customary in its origins. *See* James R. Dawes, *Language, Violence, and Human Rights Law*, 11 YALE J. L. & HUMAN. 215 (1999) (tracing the development of IHL to the reciprocal practice of soldiers in the Middle Ages); *see also* Karima Bennouene, *As-Salamu Alaykum? Humanitar-*

both authoritative and controlling,[81] concessions to parsimony require a confined definition of the concept "international legal regime." Therefore, for the purposes of the present study, an international legal regime is a formal, multilateral, treaty-based[82] set of legal rules

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ian Law in Islamic Jurisprudence, 15 MICH. J. INT'L L. 605 (1994) (noting much of the content of IHL is either codified, or as yet, customary law); THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW (1989); UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, INTERNATIONAL DIMENSIONS OF HUMANITARIAN LAW 97 (1988). Nevertheless, IHL consists largely of the *jus in bello*, (defined as the law governing the methods and means of armed conflict), which is distinct from the *jus ad bellum* (defined as the law governing the initiation and cessation of armed conflict). *See* Bennoune, *supra* at 607 (citing the International Committee of the Red Cross definition of IHL) ("international rules . . . which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by the conflict"); *cf.* MICHAEL WALZER, JUST AND UNJUST WARS 21 (noting that the law of *jus ad bellum* is directed to "judgments about aggression and self-defense"). While considerations as to the obligations arising under the *jus in bello* may well influence state behavior in armed conflicts and thereby account for some of the variance along the measurements of the dependent variables, see *supra* notes 97-98 and accompanying text, the present study adopts an exclusive focus upon the texts of the treaties constituting the formal regimes under analysis for the prudential reasons elaborated *infra* at notes 82-99 and accompanying text. While the reductionism inherent in this approach is bound to give rise to criticism, it should be kept in mind that the present study is oriented more toward the development of theories and methods than to the testing thereof. Subsequent iterations of the present research will attempt to rectify errors occasioned by the exclusion of potentially significant rules, norms, principles, and decision-making procedures developed in the form of customary international law and IHL more specifically.

81. *See* ANTHONY CLARK AREND, LEGAL RULES AND INTERNATIONAL SOCIETY 89 (1999) (noting that "[t]raditional positivists would claim that in most circumstances the very existence of a treaty would indicate that there was a rule of international law."). If a treaty is concluded and entered into force, there is a presumption that authority and control exist. Nevertheless, states, as a concomitant of their sovereignty, are free to disregard and evade the control of even the most authoritative legal documents. Therefore, over time, the treaty may surrender its authority and control to the sovereignty of states that choose not to restrict their behavior in order to comply with their legal obligations. *See id.*

82. *See* Aikhionbare, *supra* note 2, at 1 (lending support for the exclusion of customary international legal rules from the conceptual definition of international legal regime employed in the present study on the basis of the judgment that international legal rules are produced predominantly through an international political process in which states voluntarily and explicitly agree to be bound by the resulting prescriptions and proscriptions); *see also* Setear, *supra* note 56, at 229 (noting

and international institutions that governs war as an instrument of policy between state parties on an obligatory basis[83] and provides for punishment of violations through the application of sanctions.[84]

c. Experimental variables

Determining the precise relationship between international legal regimes governing the use of force in the interstate system and the incidence of war is a task suitable only for an intellectual Hercules.[85] Yet theoretical divergence as to the precise relationship between international legal regimes and war does not extend to determining and operationalizing variables. Both IL/IR paradigms are flexible in approaching this step of the research process: Viewed from the perspective of the realist IL/IR paradigm, both the substance and process of international legal regimes, as well as state behaviors, are co-determined by state power and interests. Consequently, either the international legal regime or state behavior relative to the use of force can serve as the independent variable.[86] Similarly, from the per-

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that treaties, more so than other sources of international law, are the crucial test of international cooperation); Stone, *supra* note 4, at 448 (observing that of the sources of international law the dominant focus of regimes theory has been those created by treaty).

83. *See* Aikhionbare, *supra* note 2, at 1 (stating, the "obligational character of [international] law . . . distinguishes it from morality, religion, social mores, or protocol"); *see also* AREND, *supra* note 81, at 20-22 (contending that the international legal regime creates an obligation owed *erga omnes* much as do the various municipal legal regimes despite the absence of analogous legislative and executive institutions whereby to effect prescription and enforcement); Golden, *supra* note 8, at 194-95 (discussing the use of force in relation to international law).

84. In sum, an international legal regime consists of the following: (1) a process for developing an identifiable, legally binding set of rules that prescribe certain patterns of behavior among members of a society (lawmaking process), (2) process for punishing illegal behavior when it occurs (law enforcing process), and (3) process for determining whether a particular rule has been violated in a particular instance (law-adjudication process). *See* Aikhionbare, *supra* note 2, at 1-2.

85. *See generally* Kingsbury, *supra* note 48, at 370 (noting that much applied empirical research will be necessary if the two-way causal connection between international legal regimes and state behavior is to be traced). *But see* Golden, *supra* note 8, at 211-12 (contending that "law [is] not only . . . an idea but . . . a social phenomenon as well. Questions can be asked about 'when' and 'why' the law succeeds and . . . [fails].")

86. From the realist perspective, international legal regimes modify state practices less than state practices modify international legal regimes. As Golden con-

spective of the liberalist IL/IR paradigm, the international legal regime serves, alternatively, as an independent causal variable that prescribes and constrains state behaviors[87] regarding the use of force, or as a dependent variable that reflects the incorporation of norms and principles other than self-interest and power in the conduct of international relations.[88]

In the interests of parsimony and investigability,[89] the present theory shall treat the formal international legal regimes and attendant institutions governing the use of force as the independent variable, and the incidence of interstate war[90] in the international system from

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tends,

> In one breath, governments extol the virtue of an international system ordered by the rule of law; in the next, national force directs and protects national interests. The smoke having cleared, the troops withdrawn, the fait accompli presented to other states, [states] can only conclude that what they do is law, if there be law at all.

Golden, *supra* note 8, at 194.

Similarly, Strange admonishes that regimes do not readily submit to theoretical modeling as the "international arrangements [established by regimes] are only too easily upset when either the balance of bargaining power or the perception of national interest (or both together) change among the states who negotiate them." Strange, *supra* note 79, at 345. In short, for realists the boxes in a theoretical model representing the variables of state practice and international legal regimes are readily conflated. While state interests and capabilities regarding the use of force can function as the independent variable with the international legal regime the being the dependent variable, the realist paradigm is equally tolerant of constituting state practice as the dependent variable with the international legal regime and, in particular, the likelihood and costs of sanctions it would ostensibly impose through its institutions for violations, as the independent variable.

87. Bhala, *supra* note 28, at 762.

88. *Id.* at 766.

89. To wit, while the process of state foreign policy decision-making regarding the subject of compliance with international legal obligations relative to the use of force is, in effect, an intervening variable, the present theoretical iteration excludes incorporation of this level of analysis. While the exclusion of variables may indeed compromise predictability, such a defect is neither inevitably fatal to a theory of international relations or international law, nor ultimately irremediable. *See* text accompanying *supra* note 56.

90. In recent years many wars have occurred within the boundaries of existing states. Notably, the Geneva Conventions of 1949 recognize a distinction between armed conflicts between parties to the Conventions—interstate wars—and "armed conflict not of an international character" occurring in the territory of a party—civil or internal wars. Geneva Convention for the Amelioration of the Condition of

1899-1999 as the dependent variable.

d. Methodology

i. Operationalization and measurement of variables

In the present study, the independent variable—formal international legal regimes and attendant institutions governing the use of force—shall be operationalized as the three international legal regimes created explicitly to regulate the use of interstate force in the period 1899-1999. Along with relevant institutions, these formal international legal regimes shall be measured in terms of the specific prescriptions and proscriptions of the primary formal substantive and procedural legal rules that constitute them. In successive order of appearance, these three international legal regimes are as follows (the dates in parentheses following the listing of each regime indicate the period of its operation): (1) the Hague Conventions ("Hague"), 1899-1920;[91] (2) the Covenant of the League of Nations ("League"), 1920-1945;[92] and (3) the Charter of the United Nations ("United Nations" or "UN"), 1945-present.[93] The present theoretical model shall not consider the potentially significant inputs of domestic laws,[94] customary international laws,[95] judicial opinions,[96] or treaties or conven-

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Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, art. 3, 6 U.S.T. 3219, 3220, 75 U.N.T.S. 85. However, this distinction is a relatively recent phenomenon. For purposes of simplicity, the present theory shall consider only episodes of interstate war and those internal wars that become internationalized.

91. Hague Convention (II) With Respect to the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803, (addressing international principles governing war on land); Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277 (updating the 1899 treaty). These treaties constitute the backbone of the Hague regime.

92. Covenant of the League of Nations, Treaty of Versailles, June 20, 1919, Part I, 225 Consol. T.S. 189.

93. Charter of the United Nations, June 26, 1945, 59 Stat. 1031.

94. *See, e.g.,* MARK J. OSIEL, OBEYING ORDERS: ATROCITY, MILITARY DISCIPLINE, & THE LAW OF WAR (1988) (noting that a host of U.S. domestic laws govern the planning and execution of military operations in peace and in war).

95. *See, e.g.,* Protocol I Additional to the Geneva Conventions of 12 Aug. 1949, 1125 U,.N.T.S. 3, 16 I.L.M. 1442 (1977); Protocol II Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of

tions,[97] which, although they may in fact bear upon questions of state conduct in war and peace, nevertheless do not specifically fall within the narrow and formal institutional boundaries of these international legal regimes.[98]

Non-International Armed Conflicts, 1125 U.N.T.S. 609 (1977); *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, 25 U.N. GAOR, 25th Sess., Supp. No. 28, at 123-24, U.N. Doc. A 8028 (1970) (setting forth customary international law tenets, including self-determination and equal rights); *Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons*, G.A. Res. 1653, U.N. GAOR, 16th Sess., Supp. No. 17, at 4, U.N. Doc. A/5100 (1961) (purporting to prohibit the use of nuclear weapons as a violation of an evolving norm of *jus cogens*).

96. The International Military Tribunals at Nuremburg and the Far East, as well as the International Criminal Tribunal for the Former Yugoslavia ("ICTY") are examples of international judicial or arbitral bodies which may indeed assert positive influence upon state decisions regarding the use of interstate force. *See* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 1546, 82 U.N.T.S. 280, 284 (establishing the International Military Tribunal); SCOR Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. at 1, U.N. Doc. S/RES/827 (1993) (establishing an international tribunal for the prosecution of violators of "international humanitarian law" in what was formally Yugoslavia). Because the latter forum, unlike its predecessors, does not depend upon the prior case-by-case agreement of the states concerned for its legal competence as it was created within the structure of the formal international legal regime governing the use of force, the ICTY and its decisions would be relevant to the present theoretical model if parsimony and investigability did not counsel exclusion. However, only the latter fora does not depend upon the prior case-by-case agreement of the states concerned for its legal competence; it was created within the structure of the formal international legal regime governing the use of force. As such, the ICTY is the sole international judicial body the inputs of which would otherwise be relevant to the present theoretical model if parsimony and investigability did not counsel exclusion.

97. *See, e.g.*, Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1949); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 26 U.S.T. 583 (1972); Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 31 U.S.T. 333 (1977); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 31 I.L.M. 800 (1993).

98. *See generally* Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3219, 75 U.N.T.S. 85 (relating state obligations in war regarding the wounded, sick and shipwrecked); Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3317, 75 U.N.T.S. 135 (relating

The dependent variable, the incidence of interstate war in the international system from 1899-1999, shall be operationalized as the composite of the following four subvariables for each period: (1) disputatiousness (measured as the number of disputes per year); (2) frequency (measured as the total number of wars); (3) magnitude (measured as the number of wars per year);[99] and (4) intensity (measured as the total number of battle deaths proximately resulting from wars per year).[100]

Regime effectiveness shall be measured as the product of intensity and the reciprocal of disputatiousness, divided by the number of years in the regime period, and expressed in terms of deaths per dispute per year. Furthermore, regime effectiveness, as a regime effectiveness coefficient, shall be determined for each regime.

In the present study, no attempt will be made to differentiate the phenomenon of interstate war as to causes of war escalation and resolution, issue-areas over which wars are fought, third-party participation, regional or dyadic distribution, national propensities to engage in force, cycles of war, or specific military or political actions.[101]

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to state obligations regarding the treatment of prisoners of war); Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (recognizing genocide as an international crime).

99. Practical limitations prevent a more refined measurement of war magnitude that calculates the fraction of the possible number of nation-months of war. In future research, war magnitude will be determined by defining the number of nations in the international system during a period and the number of months in a period, and then the maximum number of nation-months of war that would be produced if every nation were engaged in war for the entire duration of the period will simply be the product of the two numbers. For a discussion of intended future research, see *infra* at Part VII.

100. This method for making operational the dependent variable borrows much from the work of Small and Singer, who measured the incidence of war in terms of its severity (measured as the number of "battle deaths"), its magnitude (measured as the total number of "nation-months" of interstate combat), and its intensity (measured as the number of "battle deaths" per "nation-month" of combat). *See* Melvin Small & J. David Singer, *Patterns in International Warfare 1816-1965*, 391 ANN. AM. ACAD. POL. & SOC. SCI. 145, 145-47 (1970).

101. Such research, though critical to the articulation of a more complete theory, is beyond the scope of the present work. Singer et al. engage these and other research questions, though without treating international legal regimes as an independent variable, in their work. *See, e.g.*, Karl W. Deutsch, *An Interim Summary and Evaluation*, *in* 2 THE CORRELATES OF WAR: TESTING SOME REALPOLITIK

ii. Data: the Correlates of War Project and related international event sets

For generations, international relations scholars have struggled to replace artful intuition with more rigorous methodological and investigative tools, while legal scholars, working within a different epistemological tradition rooted in highly formal and structured municipal judicial fora, have been impatient to finish with the facts and get on with the law in their studies of the application of law to international conflict.[102] One of the objectives of the present study is to infuse both IL/IR paradigms with "more reliable barometers of prevailing conceptions of law and the realities of the application of norms" that will enable more systematic and disciplined development and testing of theory.[103]

Frustrated with what he perceived to be overly simplistic and ideologically-driven explanations of the causes of war that dominated international relations discourse, in 1963, J. David Singer of the University of Michigan began compilation of the most cited international interaction data set, the Correlates of War Project ("COW").[104] His ultimate objective was to produce a compelling, relatively complete, and, above all, a systematic theory of the causes of interstate war.[105] Although "correlates of war" do not imply causes

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MODELS 287, 290-93 (J. David Singer ed., 1980) (noting that more than half of the states in the international system have never engaged in war and that a mere nine states participated in more than forty percent of reported wars from 1816-1980); KALEVI HOLSTI, PEACE AND WAR: ARMED CONFLICTS AND THE INTERNATIONAL ORDER 1648-1989 142 (1991) (discussing cycles of war and analyzing the initiation and resolution of wars). *See generally* MEASURING THE CORRELATES OF WAR, *supra* note 62, at 1-156 (discussing the numerous research applications of the COW project).

102. *See* Reisman, *supra* note 35, at 15 (describing traditional flaws in IL/IR methodology).

103. Id.

104. *See* Richard L. Merritt & Dina A. Zinnes, *Foreward* to MEASURING THE CORRELATES OF WAR, *supra* note 62, at v, ix.

105. *See Introduction* to 2 THE CORRELATES OF WAR, *supra* note 101, at 1, xxxiv (discussing the objectives of the COW project). Principal COW researchers Singer and Melvin Small carefully defined and made operational hundreds of independent variables they believed to co-vary and associate with dependent variables such as the occurrence, duration, and magnitude of wars. They measured the number of soldiers and civilians killed per year of hostilities, and then systematically culled

of war, and although critics contend that COW was a misguided attempt to force the subject of investigation into the mould of the positivist method rather than tailor the method to the research question,[106] Singer ably defended his method.[107] By all accounts, COW and its progeny[108] succeeded in stimulating the development, in subsequent years, of a broader "professional commitment to the systematic, quantitative study of international conflict."[109]

Significant methodological advantages of simplicity, economic efficiency, feasibility, reliability, replicability, and availability are to be

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historical texts to generate a rich data set for all wars occurring in the international system along a longitudinal axis from 1815 to 1963. *See* Merritt & Zinnes, *supra* note 104, at vii-viii.

106. Liberalists and realists alike charged positivism with reductionism and therefore irrelevance, though for different reasons. Liberalists excoriated positivism for excluding normative inputs not susceptible of ready quantification in its calculus. *See, e.g.*, Kingsbury, *supra* note 48, at 372 (arguing that "immanent in legal thought are notions such as justice and responsibility that provide at least one element of a structure of normative evaluation."); Janice Thomson, *Norms in International Relations: A Conceptual Analysis*, 23 INT'L J. GROUP TENSIONS 67, 79-80 (1993) (recognizing the difficulty in empirical research in isolating normative factors through posing the question as to "whether a practice is the norm because it has become habitual or because people or states believe it is the right thing to do"). Although they welcomed opportunities for new trend analyses and cumulative and comparative studies, realists eschewed empirical analysis as ill-suited to capturing the complexity of the phenomenon of international relations, in large measure due to its inability to penetrate the "black boxes" of foreign policy decisional units and observe the cognitive processes of individual decision-makers. *See* WALTZ, *supra* note 17, at 13 (noting the shortcomings of empirical analysis).

107. *See Preface* of MEASURING THE CORRELATES OF WAR, *supra* note 62, at xi, xii (demonstrating that variables such as socioeconomic development of a nation state, foreign policy decisional styles, and cognitive and normative approaches of elites account for little variance and are much less salient to the study of the causes of war than are system-level variables, such as distribution of relative military and economic power and patterns of alliances).

108. For discussion of quantitative data sets inspired by COW, which have extended the longitudinal coverage of events and expanded the set of correlates of war, see CHARLES A. MCCLELLAND, WORLD EVENT/INTERACTION SURVEY (WEIS) PROJECT, 1966-1978 (1979); EDWARD E. AZAR, CONFLICT AND PEACE DATA BANK (COPDAB), 1948-1978 (1980); EDWARD E. AZAR, DIMENSIONS OF INTERACTION (DON), 1948-1973 (1975); CHARLES HERMAN ET AL., COMPARATIVE RESEARCH ON THE EVENTS OF NATIONS (CREON) PROJECT, 1959-1968 (1972); RUSSELL J. LENG, BEHAVIORAL CORRELATES OF WAR, 1816-1975 (1987).

109. Merritt & Zinnes, *supra* note 104, at ix.

gained by employing COW and related interstate event data sets to test the relationship between international legal regimes governing the use of force and the incidence of interstate war, though once again at a cost,[110] as no further detailed factual investigations or judgments are necessary. [111]

iii. Interrupted time-series

The present quasi-experimental study—hampered as is so much research in international law and international relations by the unavailability of resources and opportunities for controlled experimentation—shall draw upon COW for data to be employed in an interrupted time-series design that treats each of the three chronological periods during which an international regime was and is operative as a discrete epistemic event. Each period can then be compared and analyzed as a discrete unit of analysis; in the present study no attempt will be made to analyze the data in terms of sub-periods or particular years.

iv. Analytical baseline

To establish an analytical baseline for comparison, it is necessary to establish the incidence of war for the historical period of equal temporal duration that immediately preceded the formation of the three international legal regimes under analysis in the present study. Although data sets for the period 1799-1899, known as the Concert of Europe,[112] are less complete and less reliable than for more recent

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110. *See supra* text accompanying notes 94-96 (addressing the concessions made in the interests of parsimony and investigation).

111. In the absence of an aggregate data set such as COW, the expensive process of fieldwork in numerous far-flung locations followed by the complex analysis and accurate coding of "thousands of pages of documents of uneven probative value" by a host of assistants would require the measurement of intercoder reliability. Reisman, *supra* note 35, at 14. However, given the validation studies conducted by the collectors and the exposure of COW to peer review for nearly four decades, the present study considers COW to be a reliable source of valid empirical data.

112. The period 1799-1898, which includes the era of Napoleonic Wars as well as much of the Concert of Europe established by the Great Powers upon the conclusion of the Treaty of Paris in 1815, cannot be described as being governed by a formal international legal regime regulating the use of force. *See supra* note 11 and accompanying text (noting the general lack of international law concerning the use of force); *see also infra* note 114 and accompanying text (providing a list of wars

periods (thus requiring data estimation at particular points, particularly as to battle deaths), the aggregated data indicates that a disputatiousness value of 3.2 disputes per year[113] during the Concert of Europe produced a war frequency of thirty-six wars,[114] a war magnitude of .36 wars per year,[115] a war intensity of .032 million deaths per year,[116] and a regime effectiveness value of 100.2 deaths per dispute per year (1.02 x 10^2 deaths per dispute per year). Table 1 and the summary that follows presents a list of the interstate wars and associated battle deaths that occurred during the Concert of Europe along

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that occurred during the period of the Concert of Europe). For purposes of theoretical simplicity, the period 1799-1898 is treated in the present study as being without a formal international legal regime, although a realist balance-of-power system in which the military force of the United Kingdom was deployed to stabilize the constellation of power whereby to deter military adventurism by continental European powers, which is credited by many scholars with preserving the general peace of the international system. For a discussion of the balance of power as international regime, see F.H. HINSELY, POWER AND THE PURSUIT OF PEACE: THEORY AND PRACTICE IN THE HISTORY OF RELATIONS BETWEEN STATES 193-96 (1967).

113. *See* J. David Singer, *Variables, Indicators, and Data: The Measurement Problem in Macropolitical Research*, *in* MEASURING THE CORRELATES OF WAR, *supra* note 62, at 3, 29; *see also* DANIEL S. GELLER & J. DAVID SINGER, NATIONS AT WAR: A SCIENTIFIC STUDY OF INTERNATIONAL CONFLICT 128 (1998) (commenting on the research of Gochman and Maoz, whose Militarized Interstate Dispute database indicates an average of 1.7 disputes per year between 1816 and 1848, an average of 4.2 disputes per year between 1849 and 1870, and an average of 3.4 disputes per year between 1871 and 1890).

114. *See* J. DAVID SINGER & MELVIN SMALL, THE WAGES OF WAR 1816-1965: A STATISTICAL HANDBOOK 59-65 (1972) (providing data on international wars between 1816 and 1919); *see also* JACK S. LEVY, WAR IN THE MODERN GREAT POWER SYSTEM, 1495-1975 88-90 (1983) (providing data on international wars between 1667 and 1815. Refer to Table 1 for a list of the wars that occurred during the period of the Concert of Europe. In future research, tables detailing the specific incidence of particular disputes, significant event-interactions, war narratives, and political and military outcomes will be provided.

115. To calculate the war magnitude it is necessary to divide the war frequency by the number of years in a period. Thus, a total of 36 wars divided by 100 years in the period 1799-1898 yields a war magnitude of .36 wars per year.

116. Dividing the number of battle deaths by the number of years yields a war intensity of .032 million deaths per year. The frequency and intensity of warfare prior to the advent of the modern international system is surprising to many. *See* BLAINEY, *supra* note 11, at 228 (stating, "[o]ne vanity of the twentieth century is the belief that it experienced the first world wars, but at least five wars [in the eighteenth and nineteenth centuries] involved so many nations and spanned so much of the globe that they could also be called world wars.").

with values for war frequency, war magnitude, war intensity, and regime effectiveness:

TABLE 1

CONCERT OF EUROPE: WAR INCIDENCE VALUES

Concert of Europe Wars	Battle Deaths (Est.)
French Revolutionary Wars	200,000
Napoleonic Wars	1,869,000
Russo-Turkish War	45,000
Russo-Swedish War	6,000
War of 1812	4,000
Neapolitan War	2,000
British-Maharattan War	1,000
Franco-Spanish War	1,000
Navarino Bay	3,180
Russo-Turkish War	130,000
Mexican-American War	17,000
Austro-Sardinian War	9,000
First Schleswig-Holstein War	6,000
Roman Republic War	2,200
La Plata War	1,300
Crimean War	264,200
Anglo-Persian War	2,000
War of Italian Unification	22,500
Spanish-Moroccan War	10,000
Italo-Roman War	1,000
Italo-Sicilian War	1,000
Franco-Mexican War	20,000
Ecuador-Colombian War	1,000
Second Schleswig-Holstein War	4,500

Concert of Europe Wars	Battle Deaths (Est.)
Spanish-Chilean War	1,000
Seven Weeks' War	36,100
Austro-Prussian War	34,000
Franco-Prussian War	187,500
Russo-Turkish War	285,000
Pacific War	14,000
Sino-French War	12,100
Central American War	1,000
Sino-Japanese War	15,000
Greco-Turkish War	2,000
Spanish-American War	10,000
Total Battle Deaths	3,220,580

TABLE 1 SUMMARY

War Intensity	.032 million
Disputatiousness Value	3.2
War Frequency	36
War Magnitude	0.36
Regime Effectiveness Value	100.2

v. Assumptions

For purposes of the present study, several assumptions shall be employed as simplistic mechanisms for the exclusive purpose of enabling comparative assessment and theoretical generation at this juncture in the research effort. It is believed that neither realists nor liberalists would object on theoretical grounds to the incorporation of the following:

a. International legal regimes alone mediate the relationship between state military power and outcomes in international relations,

particularly in the security and territory issue-areas;

b. To the extent that independent variables other than international legal regimes can be construed to mediate this relationship, the effects of these variables are made manifest predominantly through the invocation, interpretation, and application of the international legal regimes; and

c. The most effective international legal regime is that which prevents disputes altogether. In the alternative, the most effective international legal regime successfully interposes between all disputants in every dispute, regardless of specific interests and capabilities, and prevents the incidence of interstate war, while securing outcomes that are both consistent with its rules, norms, principles, and procedures, and nevertheless acceptable to all disputants.

vi. Data analysis

Recognizing that it is difficult to establish the micro-foundations of such a complex phenomenon as the relationship between international legal regimes and the incidence of war,[117] that there is typically

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117. While the urge to draw causal inferences in social science research can be difficult to resist, mere evidence of association, while it can spawn confidence that a causal relationship exists, does not establish the nature of that relationship. One can be right for the wrong reasons. Theoretical elaboration that specifies and traces causal pathways and answers the important questions of "how?" and "why?" and "under what circumstances?" is necessary. Even if an analysis of the data in the present study were to demonstrate a perfect correlation between legal rules governing the use of interstate force and state behavior in accord with the requirements of those rules—the standard definition of legal compliance—it would be erroneous to conclude on this basis alone that legal rules cause state compliance. This is particularly the case if variables such as considerations of narrow state interests or broader ethical considerations suppress the prescriptions of international regimes or intervene between those prescriptions and state decisions to engage or not engage in interstate force. In other words, any observed correlation may in fact be spurious and not indicative of causation. *See* Kingsbury, *supra* note 48, at 368 (commenting that the precise effects and causes of international legal regimes are difficult to isolate and identify, particularly for those who concur with the liberalist postulate that there is a normative relationship between international legal regimes and considerations of justice and morality); *see also* INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at vi (recognizing that in practice, international legal regimes can serve not only as a functional tool to induce compliance, but as a flexible foreign policy tool with which to manage political conflict that permits, through loose interpretation, the justification of one set of claims and concessions, as well as the simultaneous condemnation of another

an interplay between theory and data, and that to an extent the data guides the post factum quest for theoretical generalizations, analysis of the data in the present study will occur largely through a process of "eyeballing" rather than via a formal statistical approach. In this manner it is hoped that reductionist errors will be compounded as little as possible while fostering enumerative, though not causal, generalizations and allowing the systematic building of a proto-theory[118] that will serve as a springboard to other, perhaps more general, research.

Thus, in the present study the data will be analyzed simply to determine whether there is an associative relationship between international legal regimes governing the use of interstate force and the incidence of interstate war. If no associative relationship exists, as evidenced by the existence of an equal or greater frequency, magnitude, and/or intensity of war incidence during the periods governed by international legal regimes, then international legal regimes is a "noisy" variable and the realist IL/IR paradigm is potentially a better explanatory heuristic than the liberalist paradigm. On the other hand, the presence of an associative relationship, particularly a strong one, will be grounds for further research oriented toward clarification and elucidation of that relationship. Such research would include tracing suspected causal mechanisms and suggesting potential normative refinements of the structure, function, and mission of international legal regimes.

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set of claims and concessions); Herbert, *supra* note 39, at 234-35 (citing Franck in arguing that the measurement of compliance with international legal regimes is a difficult process that blends subjective and objective criteria and requires precise identification of the legal rules at issue, assessment of the perceived legitimacy of the legal rules, quantitative measurement of state adherence to the rules, and identification of the specific features of the rule that cause state compliance). In short, it is extremely difficult to elucidate state compliance with the dictates of international legal regimes through empirical, system-level analysis: metatheoretical work at each level of analysis is ultimately necessary.

118. In subsequent research, it is hoped any specification errors can be addressed by identifying and incorporating other relevant variables in the prototheoretical model, whereby in excluding a relevant variable or variables the appearance of an effect caused by this intervention may in fact be the effect of other variables. Similarly, it is hoped that any problems of multicollinearity in which inputs other than the effect of international legal regimes occurred during the periods under analysis and produced or contributed to the incidence of interstate war can be cured.

III. OBSERVATIONS AND ANALYSIS

A. THE HAGUE CONVENTIONS, 1899-1920

1. Origins

By the end of the nineteenth century, the rampant growth of international organizations had begun to draw aspects of international relations within the orbit of customary international law.[119] Meanwhile, the horrors of the Napoleonic, Crimean, and United States Civil Wars provided the impetus for a universalized and codified international legal regime regulating war.[120] The attention of scholars and statesmen soon turned to providing for the arbitration and adjudication of disputes,[121] the protection of the interests of neutral states, and the creation of bodies of formal rules and institutions to limit the scope and regulate the conduct of military operations.[122]

At the Hague Conferences of 1899 and 1907, representatives of forty-four states considered the concept of an international assembly and proposed that collective diplomacy codify and develop an international regime to govern the use of interstate force to establish standing procedures for the peaceful settlement of international disputes.[123] The entry into force of the Hague Conventions of 1899 and

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119. *See* Fidler, *supra* note 5, at 423 (explaining that many believed there was a need for an international organization capable of using military force to uphold international law and decisions of international tribunals).

120. The dominant themes that drove early efforts to codify international law regulating the use of interstate force are rather similar to the principal intellectual threads of liberal internationalism and globalism: democracy, disarmament, economic interdependence, international tribunals for the peaceful settlement of disputes, enlightened public opinion, and rejection of balance of power have been consistent rallying points for more than a century. *See id.* at 423-24 (discussing the initial movements toward a new concept of an international organization); *see also supra* note 11 and accompanying text (introducing the origins and pre-twentieth century development of international law regarding the use of interstate force).

121. *See* Lynch, *supra* note 32, at 600-01 (observing that movement groups acknowledged the relationship between peace and free trade).

122. *See* BLAINEY, *supra* note 10, at 171 (explaining that the agreed upon "warning of war" was designed intentionally to protect neutral, as opposed to warring, nations).

123. *See* JOHN F. MURPHY, THE UNITED NATIONS AND THE CONTROL OF

1907[124] convinced many liberalist observers that the end of international relations was nigh and that war might soon be banished from an international system proceeding toward the development of an international society.

2. Substantive Content

The primary rules[125] established by the Hague provided as follows:

a. Codification of customary and humanitarian Law

> Pending the preparation of a more complete code of the laws of war, the . . . parties deem it opportune to state that, in the cases not provided for in the rules adopted by them, the inhabitants and the belligerents shall remain under the protection of and subject to the principles of the law of nations, as established by the usages prevailing among civilized nations, by the laws of humanity, and by the demands of public conscience.[126]

b. Duty to instruct soldiers in the law of war

Contracting parties agreed to issue instructions to their armed land forces in accordance with the Regulations respecting the Laws and Customs of War on Land, which was annexed to the Hague Convention.[127]

c. Circumscription of Right to Engage in War and Duty of Notifi-

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INTERNATIONAL VIOLENCE: A LEGAL AND POLITICAL ANALYSIS 9 (1982) (recognizing that the international regime implemented rules and institutions intended as peacetime measures, rather than a response to immediate violence).

124. *See supra* note 91 and accompanying text (setting forth the Hague Conventions of 1899 and 1907).

125. Although the 1899 Hague Declaration II Concerning Asphyxiating Gases and the 1899 Hague Declaration III Concerning Expanding Bullets purported to codify emerging customary legal proscriptions against the use of poison gas and hollow-point ("dum-dum") bullets, they were not treaties. Therefore, these conventions did not impose legal obligations upon members to the Hague that did not sign them and as such did not constitute part of the international legal regime labeled "Hague" for purposes of this study. *Cf. supra* note 81 and accompanying text (explaining that even an authoritative document such as a treaty may not necessarily restrict the sovereignty of states).

126. 1899 Hague Convention (II) Respecting the Laws and Customs of War on Land, *supra* note 91, Preamble.

127. 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, *supra* note 91, art. 1, 36 Stat. 2290.

cation

In the case of a serious dispute, before making an "appeal to arms" the parties agreed to resort "as far as circumstances allow" to the good offices or mediation of friendly states. Moreover, the parties accepted that wars should not begin until after a nation had issued either a "reasoned declaration of war or . . . an ultimatum containing a conditional declaration of war."[128]

d. Basic Rules Governing Warfare

Parties agreed that the "right of belligerents to adopt means of injuring the enemy is not unlimited."[129] Specifically, the parties expressly forbade the use of poison weapons,[130] killing of prisoners, declaration of no quarter, needless destruction of property, ruses to encourage false truces,[131] attack on undefended civilian dwellings[132]— particularly those used for scientific, artistic, or hospital purposes[133]— and suspension of the legal rights of nationals of belligerents.[134] Parties further agreed that prisoners of war were to be "humanely treated" and not subject to abuse, excessive work, or judicial punishment.[135]

3. *Incidence of War*

More than one hundred twenty disputes[136] during the period of the Hague generated a disputatiousness value of 6.0 disputes per year, a

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128. 1907 Hague Convention (III) Relative to the Opening of Hostilities, Oct. 18, 1907, art. I, 36 Stat. 2261, T.S. 538.

129. 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, *supra* note 91, annex, ch.3, art. 22, 36 Stat. 2301.

130. *Id.* art 23(a), 36 Stat. 2301.

131. *Id.* art. 23(b)-(d), (f), 36 Stat. 2302.

132. *Id.* art. 25, 36 Stat. 2302.

133. *Id.* art. 27, 36 Stat. 2303.

134. *Id.* art. 23(h), 36 Stat. 2302.

135. *See* 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, *supra* note 91, arts. 4-12, 36 Stat. 2296-99 (establishing that a hostile government has the power over prisoners of war, and that government is charged with maintaining them).

136. An average of slightly over six disputes per year occurred during the period of the Hague. *See* Gochman & Maoz, *supra* note 62, at 199.

war frequency of eleven wars,[137] a war magnitude of .52 wars per year, a war intensity of .59 million deaths per year, and a regime effectiveness value of 4,690 deaths per dispute per year (46.90 x 10^2 deaths per dispute per year). Table 2 and the summary that follows presents a list of the interstate wars and associated battle deaths that occurred during the Hague along with values for war frequency, war magnitude, war intensity, and regime effectiveness:

TABLE 2

HAGUE CONVENTIONS: WAR INCIDENCE VALUES

Hague Conventions Wars	Battle Deaths (Est.)
Russo-Japanese War	130,000
Central American War	1,000
Central American War II	1,000
Spanish-Moroccan War	10,000
Italo-Turkish War	20,000
First Balkan War	82,000
Second Balkan War	60,500
World War I	12,000,000
Hungarian Allies War	11,000
Russian Civil War	5,000
Greco-Turkish War	50,000
Total Battle Deaths	12,370,500

137. SINGER & SMALL, *supra* note 114, at 64-66; LEVY, *supra* note 114, at 91. Refer to Table 2 for a list of the wars that occurred during the period of the Hague.

TABLE 2 SUMMARY

War Intensity	.59 million
Disputatiousness Value	6
War Frequency	11
War Magnitude	.52
Regime Effectiveness Value	4,690

4. Assessment

In response to the conferences held in 1899 and 1907, the Final Act of the Second Hague Peace Conference proposed holding a third Conference to further strengthen and broaden the substantive content of the Hague regime and provide for the development of formal institutions.[138] While a Third Hague Peace Conference was to be held around 1915, World War I (also referred to as the "Great War") prevented and terminated the embryonic Hague regime in its infancy before many lessons could be drawn. Still, the Hague revealed itself as a realist construction that offered little more than a modification of the *jus in bello* and gave little if any consideration as to what law should govern the initial resort to force.

B. LEAGUE OF NATIONS, 1921-1945

1. Origins

Liberalist proponents of the "peace through law" paradigm were initially disenchanted by the failure of the Hague to defend order against forces of disarray that sparked the Great War,[139] introducing the deliberate targeting of civilians along with a vast array of theretofore unimaginably destructive technologies such as poison gas, submarines, and combat aircraft.[140] Nevertheless, adherents of the liberalist IL/IR paradigm were heartened by the development of a shared

138. *See* DOCUMENTS ON THE LAWS OF WAR 43 (Adam Roberts & Richard Guelff eds., 3d ed. 2000).

139. Golden, *supra* note 8, at 212.

140. *See* Lynch, *supra* note 32, at 612 (explaining that the largely destructive nature of this new form of warfare led to the movement towards disarmament).

and widely diffused post-war conviction that war had become the central problem in international relations.[141] Rather than merely resuscitate and extend Hague and its rules by drafting additional positive legal rules to proscribe certain applications or threats of interstate force,[142] the framers of the League elected to craft still more intricate and formal institutional arrangements to create and enforce their legalistic vision[143] of international society. By institutionalizing the international political process within the framework of the League, replacing self-help and passion with collective security and reason,[144] and undergirding international relations with the Austinian

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141. *See* HOLSTI, *supra* note 101, at 208-09 (noting that whereas the fundamental problems of the international system were previously perceived to be born from systemic power imbalances or militaristic states, the magnitude of the horrors of the Great War established a psychological milieu in which many were convinced that the phenomenon of war itself was the scourge of mankind, and that it was therefore essential not merely to manage wars but to create a peaceful international order that would eradicate the preconditions for future international conflicts).

142. *See* J.P. Dunbabin, *The League of Nations' Place in the International System*, 78 HIST. 421, 422-23 (1993) (noting that although the League did in fact exhibit a substantial measure of continuity with the diplomatic principles, organs, practices, and alignments that prevailed during the Hague period, the framers were determined to extend the legal proscription and regulation of war).

143. Peace through law was, without question, the *weltanschauung* that motivated the formation and operation of the League. According to Chimni,

> [i]n all the dealings of the League, international law was at the heart of the discussion. Idealistic approach, optimism, emphasis on international law created the 'Geneva atmosphere' . . . The legal department of the League played a great role; the Permanent Court of International Justice was frequently resorted to. The Mandates Commission was primarily moved by legal considerations. Legal arguments were at the core of every debate; every delegate knew that he must justify his attitude legally. Hence, the greatest importance was given to international law in the foreign offices. Many a delegate travelled to Geneva with a whole library of international law and always well accompanied by legal advisers . . .

CHIMNI, *supra* note 21, at 23-24.

144. The intellectual father of the League, President Woodrow Wilson, intended his creation to

> cause power to disappear from international politics. Power in international relations was to play the role of the police in a well-ordered constitutional state. Politics was to be transformed into a kind of common administration for the preservation of individual and general interests. In this system, power would not be opposed by power, but by rational argument.

Lorna Lloyd, *The League of Nations and the Settlement of Disputes*, 157 WORLD

command of positive law and the threat of sanctions against transgressors, the proud liberalist architects of the radically new international order hoped for success.[145] Though they did not envision the abolition of war by fiat, and though they recognized the practical utility of the use of collective force,[146] the framers were optimistic that the League would usher in new and more peaceful patterns of interstate conduct[147] and secure unstinting compliance to a collective legal regime utterly proscribing aggressive and undeclared wars.[148]

AFF. 160, 170-71 (1995).

Not everyone shared the Wilsonian conviction. Fearful of continued liberalist reliance on legal regimes and institutions, and continued faith in human perfectibility, realists attempted to import darker and more realist assumptions about the nature of international relations into the formation of the League. *See, e.g.*, CHIMNI, *supra* note 21, at 23-24 (indicating that Hans Morgenthau, the famed neoclassical realist, feared that the fatal deficiencies of international legal regimes would yield war yet again); Slaughter Burley, *supra* note 56, at 207-08 (noting that realists such as Morgenthau, E.H. Carr, and George Kenan rejected "project[ion] of the ordered domestic existence of a liberal state onto the inherent anarchy of the international system" and "disarm[ament] in the face of rising fascist power" as liberalist follies). Nevertheless, liberalists, "animated by a faith and confidence in human reason and progress," carried the day. Fidler, *supra* note 5, at 426.

145. *See* Golden, *supra* note 8, at 209 (recognizing that the League represented the greatest extension in the history of liberal thought and the most profound effort to restrict state sovereignty the world had yet witnessed).

146. *See* Lloyd, *supra* note 144, at 170 (suggesting that the framers of the League did not conceive of their mission as outlawing interstate war but rather believed their purpose to be the reduction of its scope, the amelioration of its intensity, and the limitation of its frequency); *see also* Fidler, *supra* note 5, at 426-27 (proposing that the League departed from classic liberalism by conceding that human reason and economic interdependence alone were not enough to prevent interstate war without the creation of formal international institutions built upon power and international organization). *But see* BLAINEY, *supra* note 11, at 172 (arguing that a minority of liberalists did indeed desire to ban war rather than simply limit the rules by which it should be initiated, conducted, and concluded).

147. *See* BOYLE, *supra* note 31, at 23-24 (noting that the small size of the international system, the relative degree of ideological homogeneity, and the extent to which international political and diplomatic elites "thought in terms of a real international community of states"—based on Western concepts of reason, Christianity, the Enlightenment, and the Industrial Revolution—contributed to optimism for the success of the League in the immediate post-war era).

148. *See* Aikhionbare, *supra* note 2, at 10. For liberalists, the principles of community public opinion and consent would overcome the absence of an international sovereign and the weakness of previous international regimes, provided that the League constructed an institutional legal framework to which states would voluntarily adhere and from which significant benefits could be derived through coop-

Initially, their optimism appeared justified.[149]

2. Substantive Content

The primary rules established by the League provided as follows:

a. Arms Reduction

Members agreed in Article VIII of the League Covenant ("League Covenant") to reduce the means to fight wars via disarmament "to the lowest point consistent with national safety and the enforcement by common action of international obligations."[150]

b. Qualification of the Right to Engage in War Through Guarantees of Territorial Integrity and Political Independence

Pursuant to Article X, member states undertook to "respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League."[151]

c. Collective Security

In Article XI, members agreed that any war or threat of war was a matter of concern to the entire League and that other members had the "friendly right" to call attention to anything that threatened to disturb the peace.[152] Pursuant to the exercise of this right, the League was to take whatever action "may be deemed wise and effectual to safeguard the peace."[153]

d. Peaceful Settlement of Disputes

In Article XIII, members agreed to submit disputes "which they recognized to be suitable" to judicial settlement or arbitration in either the Permanent Court of International Justice or the Council of

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eration. The ultimate sanction, however, would include military enforcement by a multilateral coalition and thus the exclusion of a transgressor from beneficial and even vital relationships of interdependence with other states. *See* BOYLE, *supra* note 31, at 13-14.

149. *See* BOYLE, *supra* note 31, at 17 (noting that in the early 1920s, the League appeared to engender interstate cooperation and diminish the concept of state sovereignty in favor of collective security).

150. LEAGUE OF NATIONS COVENANT art. VIII.

151. *Id.* art. X.

152. *Id.* art. XI.

153. *Id.*

the League of Nations.[154] Similarly in Article XII, members agreed "in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report of the Council."[155] Article XIII further specified the subject matters that were "generally suitable" for submission to either arbitration or judicial settlement and obligated members to carry out in good faith any arbitral award or judicial settlement and to "not resort to war" against other member states complying with an award or decision.[156] Under Article XV, members agreed to submit to the Council "any dispute likely to lead to a rupture, which is not submitted to arbitration or to judicial settlement."[157]

e. Sanctions

Under Article XVI, if a member state had committed an act of war

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154. *Id.* art. XIII.

155. *Id.* art. XII. Still, Article XII allowed members to take any action they deemed appropriate if the Council or Assembly, under Article XV, failed to issue a recommendation within six months of referral of the dispute. *See infra* note 157 and accompanying text (discussing the authority of the Council concerning the settlement of disputes).

156. LEAGUE OF NATIONS COVENANT art. XIII.

157. *Id.* art. XV. Although under Article XV(6) members foreswore the use of war against a disputant member that complied with the content of a unanimous Council report (disputants were forbidden from voting on issues to which they were parties), the role of the Council was restricted to issuing recommendations rather than binding decisions, and as such did not absolutely abridge the legal right of states to resort to the use of force. *Id.* art. XV, para. 6. Moreover, important textual reservations limited the reach of Article XV: in the event the Council failed to reach a unanimous report the members reserved the right under para. 7 to take any action they considered "necessary for the maintenance of right and justice," and para. 8 precluded the Council from making any recommendation if it deemed the dispute to have arisen out of a matter "which by international law is solely within the domestic jurisdiction of that party. *Id.* art. XV, para. 8. Further, Article XV permitted referral of the dispute from the Council to the Assembly for its recommendations, which, if not adopted by the unanimous vote of the Council and a majority of the other members, derogated to disputants the right to take whatever actions, including the use of military force, they deemed necessary. *Id.* art. V. In sum, if the Council and Assembly failed to reach a recommendation, or if the Council deemed the dispute to be one confined to a disputant's domestic sphere, the League, under Article XV, was incompetent to act beyond the imposition of the Article XII cooling-off period. For a more in-depth discussion of the legal and political machinery employed by the League for the peaceful settlement of disputes, see Lloyd, *supra* note 144, at 160 (suggesting that the success of an international organization depends primarily on the willingness of its members).

"in disregard of its covenants" under Articles XII, XIII, or XV, all other members were obligated to impose economic sanctions against the transgressor to defeat the aggression.[158] Notably, Article XVI is silent as to the subject of collective military sanctions, despite the collective security provision of Article XI.[159] Therefore, although individual members retained the implicit legal right to use force to secure a settlement upon the unanimous recommendation from the Council or an Assembly majority,[160] the use of collective military sanctions under Article XVI is neither automatic nor obligatory.[161]

f. Kellogg-Briand Pact[162]

Parties to the Kellogg-Briand Pact—one in a series of treaty-based attempts advanced by League members to close remaining gaps in the institutional fence circumscribing the legal right to resort to war[163]—"condemn[ed] recourse to war for the solution of international controversies and renounce[d] it as an instrument of national

158. *See* LEAGUE OF NATIONS COVENANT art. XVI (providing that "[s]hould any Member resort to war in disregard of its Covenants . . . it shall ipso facto be deemed to have committed an act of war against all other Members . . . which hereby undertake immediately to subject it to the severance of all trade or financial relations."). The framers anticipated that the certainty that economic sanctions would be imposed would induce rational states to alter their behaviors a priori so as not to be deprived of associative benefits. However, the ostensibly reflexive nature of the economic sanctions evidenced by the text of Article XVI was nullified by a 1921 interpretative resolution of the League Assembly which delegated to each member severally the power to determine whether and how to apply them. *See* MURPHY, *supra* note 123, at 21.

159. *See* LEAGUE OF NATIONS COVENANT arts. XVI, XI.

160. *See supra* note 157 and accompanying text (establishing the authority of the Council to resolve disputes).

161. *See* MURPHY, *supra* note 123, at 21 (explaining that the imposition of military sanctions against states who violated the Covenant was not automatic or mandatory).

162. Renunciation of War as an Instrument of National Policy (Kellogg-Briand Peace Pact or Pact of Paris), Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57.

163. Cognizant that they were engaging in an evolutionary process, members of the League, labored to strengthen the legal provisions proscribing war as an instrument of state policy through supplementary instruments, such as the 1923 Pact of Mutual Assistance, the 1924 Geneva Protocol for the Pacific Settlement of International Disputes, and the 1925 Locarno Pact. *See* YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENSE 80 (1988).

policy in their relations with one another."[164] Nevertheless, the signatories reserved the right to determine when war might be necessary in "self-defense."[165] This right to self-defense extended the use of war as an instrument of international, as opposed to national, policy in enforcement of League sanctions, or separate from the reciprocal relations of the contracting parties.[166] As such, the Kellogg-Briand Pact simply advanced the progressive articulation of a norm against war while clarifying the formal procedures to be employed under Articles XI-XVI of the League Covenant.

3. *Incidence of War*

During the League period, more than one hundred sixty disputes[167] generated a disputatiousness value of 6.7 disputes per year, a war frequency of seven wars,[168] a war magnitude of .28 wars per year, a war intensity of .65 million deaths per year,[169] and a regime effec-

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164. LEAGUE OF NATIONS COVENANT art. 1. One commentator hailed the Kellogg-Briand Pact as a "watershed date in the history of the international regulation of the use of inter-State force" since with it war was made illegal in principle if not in practice. DINSTEIN, *supra* note 163, at 81.

165. *See* LUARD, *supra* note 11, at 247-48 (explaining that the right to self-defense included defense of physical interest outside a country's own borders).

166. *See id.* at 248 (recognizing that nations were reluctant to renounce entirely the right to use force); *see also* DINSTEIN, *supra* note 163, at 80-81 (noting that while the Kellogg-Briand Pact did not incorporate the a self-defense provision, most parties reserved the right of self-defense).

167. An average of slightly approximately 6.7 disputes per year began during the period of the League. Gochman & Maoz, *supra* note 62, at 199. A total of sixty-six were referred for recommendations during its existence. *See* HOLSTI, *supra* note 101, at 208-09 (observing that although eleven wars resulted in violations of League obligations, the League peacefully resolved, short of war, thirty-five disputes that threatened to evolve into the use of interstate force); *see also* Dunbabin, *supra* note 142, at 438 (detailing the final disposition of disputes referred to the League).

168. SINGER & SMALL, *supra* note 114, at 66-67; LEVY, *supra* note 114, at 91. Refer to Table 3 for a list of the wars that occurred during the period of the League.

169. Approximately fifteen million deaths - the majority of which are attributable to World War II - are the direct consequence of wars during the period of the League. SINGER & SMALL, *supra* note 114, at 66-67; LEVY, *supra* note 114, at 91. Refer to Table 3 for a list of the wars that occurred during the period of the League. In future publications, tables detailing the specific incidence of particular disputes, significant event-interactions, war narratives, and detailed political and

tiveness value of 3,911 deaths per dispute per year (39.1 x 10^2 deaths per dispute per year). Table 3 and the summary that follows presents a list of the interstate wars and associated battle deaths that occurred during the League along with values for war frequency, war magnitude, war intensity, and regime effectiveness:

TABLE 3

LEAGUE OF NATIONS: WAR INCIDENCE VALUES

League of Nations Wars	Battle Deaths (Est.)
Manchurian War	60,000
Chaco War	130,000
Italo-Ethiopian War	20,000
Sino-Japanese War	1,000,000
Russo-Japanese War	19,000
World War II	15,000,000
Russo-Finnish War	90,000
Total Battle Deaths	16,319,000

TABLE 3 SUMMARY

War Intensity	.65 million
Disputatiousness Value	6.7
War Frequency	7
War Magnitude	.28
Regime Effectiveness Value	3,911

4. Assessments

Relative peace and prosperity in the first decade of the League's existence nurtured the establishment of cooperative efforts in economic, social, and, to a lesser extent, security issue areas.[170] By the

military outcomes associated with the League will be provided.

170. The following is a list of principal League successes in the security issue-

mid-1930s, however, as expansionist and revisionist powers forcibly reshuffled the international system and insecure states reverted to the dubious shelter[171] of bilateral non-aggression treaties[172] and regional security arrangements,[173] the League imploded as an institution designed to prevent and punish aggression.[174] A variety of political,

area: (1) resolution of the territorial dispute between Finland and Sweden over the Aaland Islands (1920-21); (2) reversal of the Greek occupation of Bulgarian territory (1925); (3) resolution of the territorial dispute between Turkey and Iraq over Mosul (1923-26); (4) successful restoration of Leticia to Colombia from Peru (1933-34); and (5) administration of Saar Plebiscite (1935). *See* Dunbabin, *supra* note 142, at 438-39 (providing a comprehensive analysis of League collective security operations). Despite these accomplishments, the League never undertook enforcement actions or employed collective military force, electing instead to rest upon its investigatory and diplomatic functions. League successes in the security issue-area were thus overshadowed by their own inherent modesty, by the reality that the efforts and substantive legal rules of the League bore little connection to the resolution or management of the disputes involved, and by subsequent failures. *See id.* (noting that League efforts in the security issue-area were essentially an "unremarkable exercise in the tidying up after the collapse of empires").

171. Subsequent events demonstrated the inadequacy of arrangements such as the Locarno Pact, which collapsed in 1937, and the Ribbentrop-Molotov Pact of Non-Aggression, violated by the German invasion of Russia in 1941.

172. BLAINEY, *supra* note 11, at 172.

173. Bilateral and regional arrangements developed in the absence of machinery capable of ensuring global security. Following the heels of the Locarno Pact, the next such inter-war regional mechanism, proposed by Italy in 1933, suggested the reversion to a new concert of great powers, to include Italy, France, Britain, and Germany. *See* Dunbabin, *supra* note 142, at 427.

174. Despite its tepid successes, the record of the League in deterring and sanctioning interstate force is best captured with the following chronology of selected failures: (1) the Polish seizure of Vilna (1920); (2) the Lithuanian seizure of Memel (1923); (3) the Japanese invasion of Manchuria (1931) and Japan's withdrawal from the League to avoid sanctions for the same (1933); (4) the Italian invasion of Ethiopia/Abyssinia (1935); (5) the German remilitarization of the Rhineland (1936), annexation of the Sudetenland (1937), and the annexation of Austria (1938); (6) the Russian invasion of Finland (1939) and its expulsion from the League for the same (1939); and (7) the German invasion of Poland, which sparked World War II. MURPHY, *supra* note 123, at 10-11. Although the Japanese refusal to accept the recommendation of the League Council to quit Manchuria in October 1931 inflicted damage on League credibility, the League might have survived the Manchurian crisis had it been successful in reversing the Italian invasion of Ethiopia. Enforcement failures in China and Africa, however, bred enforcement failures in Europe, which utterly destroyed the League as an international legal regime. League silence in response to Nazi expansionism—a direct contravention of legal obligations to impose sanctions and treat the situation as one of "war against all" under Articles XI through XVI—drained the League of all practical and nor-

economic, and social reasons have been offered, in ascending degree of significance as to theoretical bearing upon the divergence between the liberalist and realist IR paradigms.

a. Stochastic processes

One common explanation for the failure of the League as a collective security organization is "bad luck." From this perspective, the League's failure is attributable

> to the actions of a few obstreporous actors at key moments .... the elements of... legalist war prevention could have fallen into place ... to create a reformed structure of international relations in which conditions propitious for the outbreak of a general systematic war in Europe could have been substantially ameliorated.[175]

b. Procedural defects

Rather than possess the power to independently seize matters and take action, League institutions were hamstrung by the principle of state sovereignty. The League was thus rendered very much the tool of its members and subject to their selective (non)deployment. As early as 1926, a member of the League Secretariat reported that as a result

> [t]he action of the Council ... cannot be automatic. The Council cannot meet if it is not summoned, and it cannot be summoned except by the initiative of one of the members of the League ... If none of the members of the League moves, the League itself cannot move.[176]

While serving to foster in theory increased international consensus, the requirement of unanimity prior to action taken by the League[177] inserted a procedural obstacle in the path of the legal reso-

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mative force and made global war an inevitability. *See* Gary Goertz & Paul F. Diehl, *Toward a Theory of International Norms: Some Conceptual and Measurement Issues*, 36 J. CONFLICT RES. 634, 661 (1992) (noting that the "realistic response" to the collapse of the League in the late 1930 lay in "new accommodations and preparations for war").

175. BOYLE, *supra* note 31, at 149.

176. Lloyd, *supra* note 144, at 160.

177. *See supra* note 157 and accompanying text (setting forth the circumstances

lution of high-priority, security-related disputes triggered by several members who were unwilling to peacefully submit to the deliberations of that body. Such a requirement compounded the League's institutional inertia. Unable legally to act under this procedural circumstance,

> [t]he League thus became not an organization to enforce the terms of Article 10, but a set of procedures for resolving conflicts between parties that agreed or wished to resolve those conflicts short of conquest, that is, through compromise. The Germans, Japanese, and Italians in the 1930s did not want to resolve conflicts . . . but were resolved on military victory.[178]

c. Membership defects

The failure of the United States, the emerging global hegemon, to accede to membership[179] deprived the League of significant political, economic, and military might. Such accession could have served to alter the behaviors of other states and enhance compliance with the substantive League rules and recommendations, whether specifically within the legal regime by assisting in the generation of unanimity or through less formal and institutional processes.

d. Collapse of cooperation

The liberalist assumption that Allied unity—the product of military and economic interdependence and a common normative perspective—would outlast the end of the Great War[180] was proven false

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requiring a unanimous decision by the League).

178. HOLSTI, *supra* note 101, at 210.

179. In the aftermath of World War I, cracks appeared in the intellectual and moral foundation of American isolationism as the U.S. verged on great power status. President Woodrow Wilson succeeded in persuading the American people to set aside their isolationism and take up the sword on the belief that to turn from war was to abandon all hope for a just and lasting peace. For Americans, however, the price of several hundred thousand casualties had been too high, and thus the United States chose to remain aloof from the process of reshaping the geopolitical and moral landscape by rejecting League membership. DAVID F. TRASK, VICTORY WITHOUT PEACE: AMERICAN FOREIGN RELATIONS IN THE TWENTIETH CENTURY 78-79 (1968).

180. *See* HOLSTI, *supra* note 101, at 211 (explaining that one of the principal problems with the League of Nations Covenant was its silent assumption of the du-

with the 1930's-era restoration of the primacy of the realist principles of anarchy and self-help, even as between the Great Powers.[181]

e. Unwillingness to impose military sanctions

A brief retrospective analysis of the national military forces maintained by League members during the period of the League points plainly to the conclusion that abundant and effective military force was available to the League, even with respect to the question of German interventionism as late as 1937,[182] had League members possessed the political will to use it.[183] However, while the League had seemingly altered some of the legal rules, norms, and principles of international relations, it had not fundamentally altered the anarchic nature of the international system. Consequently, the League was held hostage by its utter dependence upon the self-interest of its members.[184]

f. Summary

The period of the League, when contrasted and compared with that of the Hague, was one of similar war frequency but with far greater war intensity.[185] Simply on this evidentiary basis, aforementioned epistemological and methodological problems prevent the hyper-realist conclusion that international legal regimes, which were cre-

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rability of Allied unity).

181. *See* GORDON A. CRAIG & ALEXANDER L. GEORGE, FORCE AND STATECRAFT: DIPLOMATIC PROBLEMS OF OUR TIME 157 (1990) (discussing the traditional realist assumptions underlying the actions of the major powers).

182. Although German power had been waxing since 1933, no less authoritative a source than Adolf Hitler noted that the collective military forces of other League members, even in the absence of the U.S., would have been sufficient to defeat Germany prior to 1938.

183. *See* text accompanying *supra* note 26 (recognizing that international law cannot govern issues of security and vital interest).

184. *See* text accompanying *supra* notes 176-177 and accompanying text (linking the failure of the League to such procedural defects as the requirement of unanimity among the members of the League prior to taking action).

185. *Compare supra* note 137 and accompanying text and tables (noting that the period of the Hague ushered in eleven wars with a war intensity of .59 million deaths per year), *with supra* note 168 and accompanying text and tables (stating that the period of the League included seven wars with a war intensity of .65 million deaths per year).

ated to govern and restructure the incidence of interstate war, are *ipso facto* utopian or naïve, inasmuch as they are "predicated upon foolish assumptions concerning the inherent utility of international law and international organizations."[186] Yet, the framers of the League failed to foresee procedural defects, failed to nurture the evolution of cooperation, and purposively devalued a thorough examination and formal institutional incorporation of political, military, and other non-legal considerations in their institutions. Thus, they unwittingly sowed the seeds for a second global cataclysm born of irredentism and the dislocations of structural upheaval.

While the League was a much more articulated and institutionalized regime than the Hague, the failure of the League lent support to the following realist theoretical counter-propositions: (1) no effective legal limits on interstate war are feasible; (2) international law and international organizations as would-be mechanisms for restricting state decisions to employ military force have fewer teeth than do paper tigers;[187] and (3) a just and lasting peace requires not only well-tempered rules but the indomitable willingness to employ decisive force against rule violators.

C. UNITED NATIONS, 1945-PRESENT

1. Origins

Although the League had failed as a collective security system, this failure did not diminish confidence as to the functional utility of international legal regimes in the security issue-area. Rather, stubbornly convinced of the theoretical soundness and practical feasibility of their transformative project, the liberalist disciples of the "peace and prosperity through law and interdependence" paradigm overcame temporary disillusionment in the aftermath of World War II[188] and elected to reform and restructure the legal institutional ap-

186. BOYLE, *supra* note 31, at 149.

187. *See* MARK A. WEISBURD, USE OF FORCE: THE PRACTICE OF STATES SINCE WORLD WAR II 1 (1997) (arguing that treaties that purport to impose limits on interstate war are "dead letters" with no practical effect on international relations).

188. A proposal for the UN was tabled at Dumbarton Oaks in 1944, even before the end of World War II. Based on this proposal, and following negotiations held in San Francisco from April-June 1945, the UN Charter was signed on 26 June

proach to the task of circumscribing war.

The framers of the UN drew several realist lessons from the unhappy history of the League. If the UN was to avoid recapitulating the history of its predecessor, it would require more expansive and more precise prohibitions on the use of interstate force,[189] more finely articulated procedural mechanisms for identifying and sanctioning rule violations, and, above all, enhanced enforcement powers through great power cooperation. Measures adopted in support of the philosophical underpinnings of liberalism balanced the concessions to the bleak practicalities of realism. By granting the UN the legal power to explore and resolve the economic, social, and ideological causes of armed conflict,[190] the framers believed they could displace international anarchy and institutionalize normative patterns of cooperation and peaceful interstate relations.[191]

In essence, for this third generation of international legal architects, the ephemeral solution to the scourge of war did not require a paradigmatic revision. Rather, the solution necessitated the enunciation of the proper substantive and procedural legal rules, the exertion of effective and timely oversight by enhanced and broadly competent institutions, as well as the willingness, when absolutely necessary, to marshal and use collective military force in the service of peaceful interdependence.[192] In sum, where the League fell short, the more robust, comprehensive, universal,[193] and enforceable legal regime en-

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1945. *See* MURPHY, *supra* note 123, at 11 (describing the background to the UN Charter).

189. *See* DINSTEIN, *supra* note 163, at 83-84 (noting that the framers of the UN intended to redress the limitations of the League by, *inter alia*, extending the prohibition on the use of force beyond the concept of war, which had begun to prove too narrow standing alone to be of comprehensive utility).

190. U.N. CHARTER art 1, para. 1 ("The Purposes of the United Nations are . . . to achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character").

191. *See* Fidler, *supra* note 5, at 427 (discussing the collective security framework that "attempted to effect an 'institutionalization of power'").

192. *See* BOYLE, *supra* note 31, at 158 (explaining that in the event that collective military force became necessary to secure compliance with the UN regime, the framers intended the rules, procedures, and institutions to operate in such a fashion as to limit the number of actors involved, and the geographic extent and intensity of the conflict, while still encouraging the peaceful settlement of the dispute).

193. In addition to extending the substantive reach of the UN beyond the more

sconced in the United Nations framework would take up the torch and lead the world out of the shadow of war.[194]

2. *Substantive Rules*

a. Peaceful settlement of disputes

The Charter of the United Nations establishes that it is the purpose of the UN to "maintain international peace and security . . . in conformity with the principle of justice and international law,"[195] while promoting respect for economic and social cooperation.[196] To accomplish this purpose, members are obligated to settle disputes through peaceful means.[197]

b. Qualification of right to engage in war through guarantees of territorial integrity and political independence

The UN attempts to comprehensively prohibit, not only the use, but the threat of, unauthorized force.[198] Article 2(4) provides that no

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narrow confines of the League to encompass economic and social issues leading to war, the framers intended the UN to develop a more universal membership and thereby avoid one of the causes for regime failure. *See supra* note 179 and accompanying text (recognizing that the United States' failure to accede membership to the League contributed to its collapse). Moreover, the framers viewed the problem of war so crucial that they extended the legal force proscribing war beyond the relations between members *inter se*. *See infra* note 200 and accompanying text (establishing Article 2(6) of the U.N. Charter). With the membership of all or nearly all states and the capacity to bind non-members to overarching norms, the legitimacy, as well as the enforcement capacity, of the UN would in theory be markedly bolstered.

194. *See* CHIMNI, *supra* note 21, at 27-29 (explaining that the framers believed they could reduce threats and uses of transnational force in international relations by creating much stronger legal, political, institutional, and military pressures in the direction of state compliance than the League had been able to generate).

195. U.N. CHARTER art. 1.

196. *Id.* art. 56.

197. *Id.* art. 2, para. 3.

198. Article 2(4) can be read as prohibiting only that force employed "against the territorial integrity or political independence of any state." Such an interpretation permits the use of force that does not implicate the territorial integrity or political independence of a state. Alternatively, Article 2(4) may permit the use of force against a non-state, provided such force is not prejudicial to international peace or security as per Article 1 and not in contravention of an action taken by the

member-state may use force or the threat of force against the political independence or territorial integrity of any other member-state, or in any manner inconsistent with the purposes of the United Nations.[199] Article 2(6) extends the applicability of this and other provisions of the UN Charter "so far as may be necessary for the maintenance of international peace and security" to non-members as well as to member-states.[200] The sole exceptions to the prohibition on the use of force arise under the following circumstances: (1) in Article 51, which permits individual and collective self-defense under only "if an armed attack occurs"[201] but only to the extent permissible under Article 2(4), and ostensibly only so long as the Security Council does not become seized of the matter;[202] (2) under Chapter VII, Article 42, as an enforcement measure at the direction of the Security Council;[203] and (3) in cases of humanitarian intervention and self-determination.[204]

c. Collective security

Collective security against aggression as a means to deter and prevent war is a central purpose of the UN. As the Preamble to the UN Charter provides, the UN is intended "[t]o save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . . and for these ends . . . to unite

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Security Council under Chapter VII. *See infra* notes 209-211 and accompanying text (establishing the authority of the Security Council to make recommendations and decisions to employ economic or military sanctions). However, this reading is generally thought to be counter to the object and purpose of the Charter.

199. U.N. CHARTER art. 2, para. 4.

200. *Id.* art. 2, para. 6.

201. *Id.* art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defense. . .").

202. *See* DINSTEIN, *supra* note 163, at 272 (suggesting that the right of self-defense extends only so long as the Security Council refrains from becoming seized of the dispute and electing to trigger Chapter VII collective security procedures).

203. *See infra* notes 206-209 and accompanying text (instituting the authority of the Security Council to recommend the issuance of economic and military sanctions).

204. *See* MURPHY, *supra* note 123, at 19-20 (discussing the compatibility of humanitarian intervention and other justifications for the use of force with the UN Charter).

our strength to maintain international peace and security . . . ."[205] Institutional provisions for collective security are limited only by the fundamental principles and purposes in Chapter I[206] and codified in Chapters V-VII in the form of the Security Council, which is accorded primary responsibility for the maintenance of international security,[207] and in Chapter VIII in the form of regional arrangements.[208]

Under Chapter VII, the Security Council alone shall determine the "existence of any threat to the peace, breach of the peace, or act of aggression . . ." and shall make recommendations and decisions as to whether economic or military sanctions should be employed.[209] Security Council decisions, but not recommendations, are binding upon members.[210] However, under Chapter VIII, the UN also contemplates and even requires that regional organizations attempt, where appropriate, to effect the peaceful resolution of regional disputes in such a manner as to prevent their universalization.[211] Although regional organizations may not take enforcement action without obtaining prior Security Council authorization[212] or without fully informing the Security Council of actions contemplated and undertaken,[213] the UN collective security regime clearly establishes dual, even redundant, institutional mechanisms and procedures at the global and regional levels to effectuate its cardinal objective of providing for global collective security.

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205. U.N. CHARTER Preamble.

206. *See supra* note 195 and accompanying text (providing that the purpose of the UN is to "maintain international peace and security . . . in conformity with the principle of justice and international law" while promoting economic and social cooperation).

207. U.N. CHARTER art. 24, para. 1 (conferring on the Security Council the responsibility to maintain global peace and security).

208. *Id.* arts. 52-54 (authorizing UN members to join regional arrangements to foster international peace and permitting the Security Council to utilize such arrangements to achieve its ends).

209. *Id.* art. 39.

210. *Id.* art. 25.

211. *Id.* art. 52.

212. *Id.* art. 53.

213. U.N. CHARTER art. 54.

d. Sanctions

Chapter VII creates an incremental procedure to compel performance by transgressing member states and sanction violations of the Charter of the United Nations.[214] The UN Charter empowers the Security Council to determine the nature of the transgression and to prescribe the course of resolution.[215] The Security Council may implement the following sanctions, in ascending increments of severity: condemnation; provisional measures;[216] economic sanctions and other nonmilitary actions;[217] the authorization to use military force in an enforcement action;[218] and the use of military forces made available "on call" pursuant to special agreements that member states have entered into with the Security Council and ratified according to their own constitutional processes.[219] Member states agree to abide by and support, to the extent they are capable, such an enforcement action.[220]

Under Chapter VIII, provided the Security Council has taken action to become seized of the issue and provided the regional organi-

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214. *Id.* arts. 39-51. The present study treats only incidence of interstate war, rather than incidence of political disputes of which the intensity does not rise to the level of severity characteristic of interstate war. Consequently, although an increasingly important function in contemporary international relations, the international legal regime governing peacekeeping and peace enforcement operation—organized under the jurisdiction of the Security Council or regional organizations pursuant to Chapters VI and VIII—is not a component of the experimental independent variable and thus not within the scope of the present inquiry.

215. *See* U.N. CHARTER art. 39 (mandating that the Security Council investigate threats to peace, breaches of peace, and acts of aggression, as well as make recommendations or determinations as to what action should be taken to restore peace).

216. *See id.* art. 40 (permitting the Security Council to call upon disputing parties to take provisional measures to restore peace prior to its recommendation or determination).

217. *See id.* art. 41 (authorizing the Security Council to take non-violent action to restore peace).

218. *Id.* art. 42. The text of Article 42 provides that the Security Council "may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security." *Id.* As such, the international legal regime established by the UN does not completely proscribe the offensive use of force but rather qualifies the right as limited to the enforcement of collective security against rule violators.

219. *Id.* art. 43.

220. *See id.* arts. 43-45, 48.

zation satisfies the requirements of authorization and reporting,[221] the appropriate regional organization[222] may undertake "enforcement action."[223] "Enforcement action" may include an array of sanctions identical to those in the Security Council arsenal.[224]

3. *Incidence of War*

More than six hundred disputes[225] during the period of the UN have generated a disputatiousness value of 12.7 disputes per year, a war frequency of fifty-one wars,[226] a war magnitude of 1.16 wars per

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221. *See supra* notes 212-213 and accompanying text (setting forth the conditions under which the Security Council may utilize regional organizations for enforcement action pursuant to Articles 53 and 54 of the UN Charter).

222. "Appropriate" in this context is generally understood to mean having a regional, geographic, or some other logical connection with the dispute as well as an institutional security architecture such as to make that regional organization the obvious "first line of defense" with competence to address the issue and potentially obviate Security Council involvement. For example, in a dispute occurring in the Middle East, the Arab League might be the appropriate regional organization to act in the interests of collective security, whereas in Latin America or Africa the Organization of American States or the Organization for African Unity, respectively, would presumably be appropriate. However, there is no precise rule to determine what constitutes a region, and its existence must be demonstrated by circumstances such as affinities of race, institutions, or political interests. *See* E.N. van Kleffens, *Regionalism and Political Pacts*, 43 AM. J. INT'L L. 666, 667-71 (1949) (discussing the elements of regional pacts).

223. U.N. CHARTER art. 53.

224. See *supra* text accompanying notes 216-219 (providing the permissible types of sanctions employed by the Security Council).

225. An average of approximately 12.7 disputes per year occurred during the period 1946 to 1976. *See* Gochman & Maoz, *supra* note 62, at 199 (providing a statistical summary of military disputes during various periods of the nineteenth and twentieth centuries). Although data is incomplete for the period 1977-1999, many disputes occurred during this period, with over 140 episodes of interstate armed conflict; not all such incidences, however, have been of such intensity that they can be classified as wars for purposes of the present study. Nikolai B. Krylov, *International Peacekeeping and Enforcement Actions After the Cold War*, *in* LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 94, 94 (Lori Fisler Damrosch & David J. Scheffer eds.,1991). It thus seems reasonable to extrapolate to generate a rather rough approximation of the number of disputes during the period of the UN.

226. SINGER & SMALL, *supra* note 114, at 68-69, 75; *see also* HOLSTI, *supra* note 101, at 274-78 (providing a table of armed conflicts from 1945-1983); LUARD, *supra* note 11, at 37 (listing thirty-two external wars fought from 1945-1986). Refer to Table 4 for a list of the wars that occurred during the period of the

year, a war intensity of .15 million deaths per year,[227] and a regime effectiveness value of 274 deaths per dispute per year (2.74×10^2 deaths per dispute per year). Table 4 and the summary that follows presents a list of the interstate wars and associated battle deaths that occurred during the period of the UN along with values for war frequency, war magnitude, war intensity, and regime effectiveness:

TABLE 4

UNITED NATIONS: WAR INCIDENCE VALUES

United Nations Wars	Battle Deaths (Est.)
Indonesian War	1,400
Palestine War	8,000
First Kashmir	3,000
Korean War	2,000,000
Sino-Tibetan War	10,000
Tunisian Independence	10,000
Moroccan Independence	10,000
Guatemala War	1,000

UN. Data from wars occurring subsequent to the most recent rounds of data updates, including the Soviet invasion of Afghanistan, the Iran-Iraq War, Grenada, Panama, Operation Desert Storm, the Yugoslav Wars of Dissolution, and ethnic violence in Africa have been included after estimation to the best abilities of this researcher, guided by the insights of the military historian Trevor Dupuy, and will be adjusted as necessary in subsequent research. *See generally* TREVOR DUPUY, FUTURE WARS: THE WORLD'S MOST DANGEROUS FLASHPOINTS (1993)(predicting the flashpoints for wars in the post-Cold War era as well as their likely outcomes).

227. As Table 4 indicates, approximately 6.7 million battle deaths, the majority of which are attributable to the Korean War, the Vietnam War, the Iran-Iraq War, and African wars of decolonization, are the direct consequence of interstate wars during the period of the UN. As an indication of the difficulty in establishing precise measurement for the dependent subvariables in the present study, see Moore, *supra* note 6, at 816. In future research, tables detailing the specific incidence of particular disputes, significant event-interactions, war narratives, and more detailed and precise political and military outcomes associated with the UN, will be provided after establishing a more rigorous method of operationalization for the dependent variable.

United Nations Wars	Battle Deaths (Est.)
Russo-Hungarian War	32,000
Sinai War	3,230
Nicaragua-Honduras War	1,000
Algerian Independence	15,000
Sino-Tibetan War	40,000
United States-Lebanon War	1,000
Belgium-Congo	2,000
India-Portugal (Goa)	2,000
Bay of Pigs	5,000
Sino-Indian War	1,000
Indonesia-Malaysia	10,000
United States-Dominican Republic	1,500
Second Kashmir War	6,800
Vietnam War	2,000,000
Mozambique-Portugal	20,000
Six Day War	30,000
U.S.S.R.-Czechoslovakia	10,000
El Salvador-Honduras	4,000
Third Kashmir War	14,000
October War	35,000
Turkey-Cyprus	40,000
Indonesia-East Timor	200,000
Mauritania-Morocco	20,000
Somalia-Ethiopia	50,000
Vietnam-Kampuchea	200,000
Uganda-Tanzania	40,000
China-Vietnam	50,000
Libya-Chad	10,000

United Nations Wars	Battle Deaths (Est.)
U.S.S.R.-Afghanistan	1,000,000
Iran-Iraq	1,000,000
Israel-Lebanon-Syria	20,000
Falklands War	4,500
United States-Grenada	1,500
Armenia-Azerbaijan	40,000
United States-Libya	1,000
United States-Panama	4,000
Operation Desert Storm	200,000
Yugoslavia-Croatia	100,000
Yugoslavia-Bosnia	200,000
Rwandan Genocide	100,000
Peru-Ecuador	1,000
NATO-Yugoslavia (Kosovo)	30,000
Ethiopia-Eritrea	50,000
Total Battle Deaths	7,638,930

TABLE 4 SUMMARY

War Intensity	.15 million
Disputatiousness Value	12.7
War Frequency	51
War Magnitude	1.16
Regime Effectiveness Value	274

4. Assessments

In its fifty-five years of existence, the UN—primarily through or at the direction of the institutional framework of the Security Council—has taken a wide panoply of actions relating to the maintenance of international peace and security in keeping with the purpose for

which it was created.[228] While one can reasonably argue that the UN has had a positive influence on ameliorating the frequency and intensity of war,[229] one can also conclude from its history that the UN is

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228. By assuming a role in international peacekeeping, the UN, in the estimation of several commentators, has demonstrated its relevance to the "democratization of the international system" and begun to construct a right to democratic governance in international law. Fidler, *supra* note 5, at 431-32. However, the results of UN peacekeeping operations are mixed at best. The following is a selected presentation of Security Council recommendations and decisions taken under Chapters VI, VII, and VIII, relating to the maintenance of international peace and security: (1) resolutions calling on parties to negotiate amongst themselves in Kashmir (1952); (2) convention of a special meeting of the General Assembly regarding Palestine (1947), Suez (1956), Hungary (1956), and Lebanon and Jordan (1958); (3) resolutions calling for a cease fire concerning Indonesia (1947), Palestine/Israel (1948), Hungary (1956), Suez (1956), India-Pakistan (1965), and the Six Day War (1967); (4) dispatch of a commission of inquiry, appointment of mediators, dispatch of observers and peacekeepers, dispatch of the Secretary General as a restraining influence, and referral to the International Court of Justice or to the appropriate regional organization regarding Costa Rica (1948), Guatemala (1954), Kuwait (1961), Cuba (1961), Panama (1964), Morocco-Algeria (1964), Bosnia (1992), Somalia (1992), and Kosovo (1999); (5) imposition of economic and other non-military sanctions against Iraq (1990-91) and Yugoslavia (1992); (6) authorization of military force by a multinational coalition regarding Kuwait (1990); (7) military sanction and direct intervention under Article 42 with respect to Korea (1950). For a comprehensive history of UN collective security operations, see MURPHY, *supra* note 123, at 25-72.

229. *See* HENKIN, *supra* note 51, at 146-47. As Professor Henkin opined in 1968, the UN had generated within its first twenty years a deterrent effect on aggressive state behavior. During the first phase of the UN regime, particularly when contrasted with earlier regimes,

> [n]ations have not engaged in "war," in full and sustained hostilities or state-to-state aggression even in circumstances in which in the past the use of force might have been expected. In the period since the Second World War there have not been analogues to the conquests and wars that followed the First World War . . . Most important, despite acute hostility, the law against unilateral force has been observed among the big powers; the most significant fact about the Cold War is that it remained cold.

Id.

Despite the passage of an additional thirty years, several commentators contend that the UN, by continuing to impose significant costs, risks, and obstacles to the use of force has caused states to become increasingly reluctant to engage in interstate war in violation of the legal regime. *See, e.g.*, John Orme, *The Utility of Force in a World of Scarcity*, *in* THE USE OF FORCE: MILITARY POWER AND INTERNATIONAL POLITICS 456 (Robert J. Art & Kenneth N. Waltz eds., 1999) (arguing that the UN is limited in its ability to prevent war because it cannot eliminate either state sovereignty issues or state motivations to go to war). Others laud the

more of a talk-shop than a legal regime. In the last fifty years the global landscape has been scarred not only by a plethora of regional, civil,[230] and superpower proxy wars,[231] but by cycles of ideologically-driven ethno-nationalist and religious conflicts.[232] Along with the emergence of the Cold War, these conflicts have implicated the very origins and functions of the international legal regime upon which the UN institutions were erected.[233] Worse yet, the UN has rarely un-

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UN for developing important institutional roles such as fact-finding, truce, supervision, peacekeeping, and peace enforcement; still others contend that the UN has contributed institutional, political, and moral capital to the general development of international law, particularly in the issue-area of human rights, humanitarian law, and trade, as evidenced by global and regional treaties such as the International Bill of Rights (which includes, *inter alia*, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic. Social and Cultural Rights, the Geneva Conventions of 1949, the International Covenant on Chemical Weapons Convention, the Covenant on Prohibition of Anti-Personnel Mines, and the World Trade Organization). EDMUND ERIC JONES, THE EFFECT OF INTERNATIONAL LAW AND INTERNATIONAL INSTITUTIONS ON THE PLACE OF WAR IN THE XXTH CENTURY 351 (1990). Other scholars laud the UN for more generally reconstituting individuals as subjects, rather than mere objects, of international law. *See* Henkin, *supra* note 51, at 575-76 (suggesting that a crowning accomplishment of the UN international legal regime has been lifting the "veil of domesticity" and endowing individuals with heightened status under international law); *see also* HANS KOCHLER, DEMOCRACY AND THE INTERNATIONAL RULE OF LAW 65 (1995) (claiming that the human rights norms embodied in the Universal Declaration of Human Rights constitute a "separate system of [jus cogens] norms . . . in normative opposition to . . . [all other] principles of international law" which remain rudimentary, pragmatic, and bound up with state sovereignty).

230. *See* David Wippman, *Change and Continuity in Legal Justifications for Military Intervention in International Conflict*, 27 COLUM. HUM. RTS. L. REV. 435, 435 (1996) (suggesting that civil wars, an increasingly common occurrence, may well be the bane of the international system in the future).

231. *See* Lori Fisler Damrosch & David J. Scheffer, *Preface* to LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 225, ix, ix-x (discussing the uses of force supported by the Soviet Union and the United States during the Cold War to support socialism and democracy, respectively).

232. *See* LUARD, *supra* note 11, at 45 (discussing the post-World War II trend towards wars of ideology, as opposed to wars of territory).

233. *See id.* at 55-60 (discussing the difficulties faced by the UN in maintaining international order in the age of ideological warfare); *cf.* CHIMNI, *supra* note 21, at 11 (cautioning that international law is increasingly coming to be perceived in the states of the South as a "hegemonic instrument of the North," the use of which is selective, based on double standards, and reinforcing of an international order that serves Northern interests in continued domination, resource extraction, and neo-

dertaken and even more rarely succeeded in the imposition of preemptive measures to preserve peace during periods of crisis;[234] direct collective confrontations of aggression have been, at best, episodic, ineffective, and inconsistent.[235] Indeed, the execution of the primary mission of the UN—preventing and resolving interstate war—has been so poor that the Security Council has all but ceased contemplating future enforcement measures involving military action.[236] Still more disturbingly, by promiscuously referring to threats to interna-

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colonial occupation of the South).

234. *See* LUARD, *supra* note 11, at 60 (contending that one of the predominant failures of the UN has been its incapacity to "act sufficiently impartially, decisively and consistently to deter acts of force *before* they have taken place"); *see also* WEISBURD, *supra* note 187, at 94 (suggesting that on the basis of accepted state practice during the period of the UN regime, wars of decolonization may in fact be (quasi)legal).

235. *See* Moore, *supra* note 6, at 814 (stating that the Security Council forcibly intervened only once in the first forty years of the UN's existence, in Korea in 1950, to preserve collective security). With respect to Korea, even in this instance the UN was unable to mount an independent military operation and had to rely on the ad hoc contributions of member-state forces. Moreover, the Security Council was unable to act in the case of Korea, and the General Assembly, under the Uniting for Peace Resolution, was forced to intervene. *See id.* Throughout a series of other wars, such as Hungary (1956), Cuba (1961), Dominican Republic (1965), the Six Day (1967) and October Wars (1973), Afghanistan (1979), Iran-Iraq (1980), the Falkland (Malvinas) Islands (1982), and Grenada (1983), a divided Security Council permitted the UN to do little more than pass a series of meaningless resolutions unaccompanied by sanctions. *See* MURPHY, *supra* note 123, at 210. The Kuwait war in 1990, however, seemed to prove that "[c][harter norms [we]re intact." Henkin, *supra* note 61, at 573. In reality, intervention was the result not of Security Council action but of a U.S.-led (i.e., hegemonic) multilateral coalition, and most commentators maintained that Kuwait was simply an intersection of the requirements of law and the realities of politics. *See* Rein Mullerson, *Self-Defense in the Contemporary World*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 225, at 13, n. 22. By the mid-1990s, the UN decision to commit only to peacekeeping and humanitarian operations, rather than to forcible intervention in Bosnia (1992) and Rwanda (1994) was almost inarguably the catalyst for genocide and subsequent regional warfare. *See* Stanley Meiser, *From Great Hope to Scapegoat*, WASH. MONTH., July/Aug. 1996, at 30. Perhaps the mot objective assessment is offered by Fidler, who opines that the UN is a selective security system effective only against small states the interests of which do not impinge the strategic objectives of the great powers. *See* Fidler, *supra* note 5, at 445–46.

236. *See* DINSTEIN, *supra* note 163, at 271 (describing the Security Council's decision to recommend collective self-defense, rather than proceeding with military enforcement measures by the UN, in the August 1990 invasion of Kuwait by Iraq).

tional peace and security in a host of Chapter VII resolutions, and addressing circumstances not genuinely rising to the level of legitimate threats to international peace and security, the Security Council has allowed political and moral considerations to stretch the concept of threat to the peace "to the point of undermining the legitimacy and authority of the entire UN Charter."[237]

Although hopes ran high upon the framing of the UN Charter, within a few short years the wartime collaboration of the major powers, and in particular that of the United States and the Soviet Union, collapsed with the dawning of the Cold War and the emergence of a bipolar international system. Despite its improvements and expansions upon the work of its predecessors, the UN was exposed as an imprecise international legal regime largely captured and paralyzed by political forces and frequently dependent for enforcement of its principles and rules upon moral, rather than military, power. In addition to the emergence of hostile bipolarity in the Cold War era, textual imprecision of the rules regarding collective security, procedural defects, and a lack of enforcement power aid in the explanation of the failure of the UN to meet the expectations of its framers.

a. Textual imprecision of collective security

The text of the UN Charter is purposefully ambiguous, incongruent, and inconsistent,[238] and no established canons of construction exist to guide the apolitical interpretation of its articles or the resolu-

237. *See* WEISBURD, *supra* note 187, at 319 (arguing that the legal concept "threat to peace and international security," after subjection to political considerations by the polarized Security Council, has been repackaged to mean everything from food shortages to the full-scale invasion of a sovereign state, and that as a result of this overreaching by the Security Council the analytical concept of threat to international peace and security is now "so broad as to be useless"); *cf.* Steven R. Ratner, *International Law: The Trials of Global Norms*, FOREIGN POL'Y (1998), at 73 (suggesting that western dominance of the UN and other international organizations undermines their legitimacy in the eyes of some who perceive them as tools of the powerful).

238. *See* OSGOOD & TUCKER, *supra* note 20, at 355-56 (contending that although textual ambiguity and inconsistency permits controversies and uncertainties to arise from resulting divergent interpretations of the rules regarding the use of force, such ambiguity and inconsistency was the negotiated price of accession that the framers were willing to pay to induce sovereign states, insistent upon retaining relative freedom of action, to accept UN membership).

tion of conflicts between its articles or between its articles and customary law. This textual imprecision, which the UN has proven unwilling or unable to resolve, is most evident in the rules establishing the collective security regime. Article 51 is murky, even when read in conjunction with Article 2(4), which is manipulable in the interests of domesticating international wars to remove them from the jurisdiction of the UN,[239] and with the customary international law requirements that self-defense be immediate and the action taken be proportionate. It leaves unanswered to the politically charged Security Council the fundamental questions of what constitutes an "armed attack" or imminent threat of an armed attack, and whether a state must actually suffer a physical attack before responding, thus leaving the door open to consideration of "anticipatory" self-defense,[240] which has been the trigger for many hostile disputes.[241] Moreover, the UN Charter does not define the circumstances for permitting the use of humanitarian intervention,[242] which places the principles of state sovereignty and self-determination in tension most acutely as they bear upon purported rights to self-determination.[243] Consequently,

239. In Korea (1950), the Soviet Union and North Korea sought to declare an internal war what most commentators deemed to be an interstate war and, therefore, not subject to the strictures of Article 2(4) as per Article 2(7), which removes from the competence of the UN matters that are "essentially of a domestic nature" and thus within the exclusive domain of state sovereignty. U.N. CHARTER art. 2, para. 7. The United States attempted the same interpretive feat to support its intervention in Vietnam (1964).

240. *See* BOYLE, *supra* note 31, at 158-59 (arguing that "anticipatory self-defense might be justified even in the absence of an actual armed attack when the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation").

241. *See* Henkin, *supra* note 61, at 573 (noting that in a host of cases, including Suez (1956) and Nicaragua (1984), "there have been efforts to interpret Article 51 to permit self-defense even where there was no armed attack but to defend other 'vital interests'.").

242. *See* U.N. CHARTER art. 2, para. 7 (providing that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .").

243. *See* HEDLEY BULL, INTERVENTION IN WORLD POLITICS 11 (1984) (noting that the principle of sovereignty entails the rule of self-help but that there is an "innate contradiction between the illegitimacy of intervention and the legitimacy of self-help", which is easy to exploit and which the UN Charter does not, to the detriment of the collective security regime, resolve); *see also* Michael L. Burton, *Legalizing the Sublegal: A Proposal for Codifying a Doctrine of Unilateral Hu-*

rather than hold states to an "obey-or-be-sanctioned" standard,[244] the UN acquiesces, recognizes, and even supports conduct that on its face violates the collective security regime[245] and permits states to justify and rationalize their conduct with legal impunity.[246]

b. Procedural defects

Failure of the Allied victors to sustain wartime cooperation necessitated the institution of the veto power for the five permanent members of the Security Council—China, France, Germany, the Soviet Union, the United Kingdom, and the United States.[247] While this pro-

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manitarian Intervention, 85 GEO. L.J. 417 (1996) (suggesting that only by codifying a doctrine of unilateral humanitarian intervention could intervention in situations of gross humanitarian violations—where the Security Council vetoes a resolution authorizing collective intervention on the ground that the action lies within the exclusive jurisdiction of the state—be permitted).

244. WEISBURD, *supra* note 187, at 315. The use of force standard proffered by Professor Oscar Schacter posits that under the UN international legal regime, as tempered by customary law, a state is permitted to use force only when (1) engaging in self-defense, (2) aiding a second state in self-defense, (3) responding to a request for aid from one contender in a civil conflict after a prior intervention by another state to aid a second contender, or (4) rescuing nationals in another state who are in imminent danger and are not receiving adequate protection from that state. *See id.*

245. *See* LUARD, *supra* note 11, at 51 (cataloging a broad variety of legal rationalizations for military actions ostensibly in violation of the UN Charter, including, *inter alia*, "self-defense," "to restore law and order," "to protect nationals," "to resist aggression," "to ensure international justice," and "to liberate oppressed people"). Some suggest that state practice under a treaty can have the effect of substantial modification of that treaty and the creation of customary international law derived from that treaty. *See* WEISBURD, *supra* note 187, at 21-24. To suggest, however, that state practice contrary to the seemingly near-absolute prohibition on the use of force in Article 2(4) has created a customary international legal rule that merely narrows the acceptable uses of force in international relations runs counter to the notion that the framers of the UN held dear—that the norms embodied in Article 2(4) were so essential to the peaceful function of the international system that no degree of contrary state practice could displace them. *See id.*

246. Textual imprecision bedevils the efficient function not only of the UN but of international legal regimes in a wide array of issue-areas. *See* INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at 1-2 (noting that "many of the [international] legal rules wheeled into action in the course of international political confrontations are sufficiently flexible to be applied with equal conviction to any side of a dispute . . .", and international law winds up "twisted to bolster political action . . .").

247. U.N. CHARTER art. 23.

cedural innovation secured the accession of all great powers to the UN, it did so at a cost. Rather than capitalize upon the opportunity to reform procedural defects, which by requiring unanimity for action had compromised the responsiveness and efficiency of the League,[248] the framers of the UN were compelled to introduce into their legal regime an element of the realist balance of power model of collective security,[249] which preserved the requirement for unanimity.[250] Although one of the most difficult tasks for any international legal regime is to resolve the tension between sovereignty and the practical requirements of collective security, by enshrining a permanent member veto in the Security Council, the framers squelched the possibility of the Security Council playing a primary role in maintaining international peace and security during the long twilight of the Cold War.[251]

c. Lack of enforcement

The disintegration of Allied cooperation that accompanied the Cold War further eroded the capacity of the UN as a functional collective security regime with respect to enforcement. Although Article 43 of the UN Charter provides for the transfer of operational control of forces from member states to the UN, and for making them permanently available to the Security Council for enforcement purposes,[252] member states—jealously husbanding their military forces throughout the era of nuclear terror and bipolar uncertainty—failed

248. *Cf. supra* notes 177-178 and accompanying text (noting that the requirement of unanimity was also an obstacle that had brought the League to an impasse in many instances).

249. *See* Fidler, *supra* note 5, at 428-29 (commenting that the failure of the collective security system during the Cold War era resulted in liberalists' adoption of the balance of power philosophy as their "most important aspect of foreign policy", which is more closely tied to realism).

250. *See* U.N. CHARTER art. 27 (providing that decisions of the Security Council on non-procedural matters require the concurring votes of all five permanent members).

251. *See* DINSTEIN, *supra* note 163, at 269 (commenting that the threat of a veto alone has had chilling effects upon the deliberations of the Security Council and has frequently prevented the Security Council from even proceeding to a formal vote).

252. U.N. CHARTER art. 43.

to make those forces available. Consequently, the UN has been crippled by absolute dependence upon the military resources and political cohesion of member states that will not commit their citizens and financial resources to missions unrelated to their own parochial objectives.

Although the responsive adaptation of the UN has been to create a strong Secretary General with the competence to request contributions of member forces on an *ad hoc* basis in support of Security Council decisions, such requests are filtered through the domestic political and legal processes of member states. Thus, they are markedly less efficient and effective than would, in theory, standing forces be under the orders of the Security Council.[253] As a consequence, the UN has derogated its responsibilities for the maintenance of international peace and security to regional organizations and to member states, jointly and severally, thereby tempering the UN's decision-making relative to peace and security, and reducing its enforcement expectations to haphazard, random peacekeeping operations.[254]

d. Summary

Although the Cold War robbed the UN of an historic opportunity to undergird international relations with the rule of law and with norms of peaceful interdependence and cooperation, the failure of the UN to shepherd into existence an era of peaceful and prosperous interdependence undergirded by law in the international system cannot be reasonably attributed to the Cold War. Despite the importance of the Cold War phenomenon in evaluating the performance of the UN international legal regime, the relative continuity of interstate war—

253. *See* MURPHY, *supra* note 123, at 21 (discussing the Security Council's responsibility and decision-making authority concerning the use of force). The inability of the UN to centralize its means of coercion, as do other advanced municipal systems, is the consequence of the unwillingness of its architects to forego assertion of the fundamental principle of the modern international system—state sovereignty.

254. *See* BOYLE, *supra* note 31, at 161 (suggesting that the "efflorescence" of UN peacekeeping operations in, among other locales, the Middle East, Cambodia, the Persian Gulf, Namibia, Angola, Somalia, Central America, Afghanistan, Bosnia, and Kosovo, is evidence that the UN international legal regime regulating interstate force is "troubled").

following the replacement of hostile bipolarity and nuclear standoff, together with a set of relatively stable and cooperative political, economic, and security relationships between the great powers after 1991[255]—suggests that endogenous variables explain more than does the Cold War.

In short, rather than proscribe war and secure international order, the UN may have simply lifted the corner of the legal veil surrounding realist political truths regarding the use of interstate force and the tendency toward disorder in the contemporary international system. The failure of the UN conjures up the following truths: (1) Article 2(4) in particular is not binding in all circumstances, particularly as a *jus cogens* norm;[256] (2) limited uses of force that do not raise any serious threat to the political status quo are not *ipso facto* illegal;[257] and (3) to the extent a rational relationship between the UN legal regime regarding the use of interstate force and UN Security Council enforcement actions exists, it is found less in an objective analysis of the text of the formal legal rules than in a subjective analysis of the political interests and military capacities of the disputants and of the predominant powers in the international system.[258] As the long-

255. *See* David J. Scheffer, *Commentary on Collective Security*, *in* LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 225, at 101, 115 (suggesting that amicable relations between the major powers of North America, while not in itself sufficient, is a "necessary condition for appreciable change in [the] legal state of affairs").

256. This assertion runs counter to contentions that the UN Charter, in Articles 2(4) and 51 in particular, has enscribed the norms of *jus cogens* against the use of force. Furthermore, it appears that the systematic violation of Articles 2(4) and 51, coupled with the absence of sanctions for such violations, suggests that those articles do not codify the general moral principles of all humanity as is requisite of a norm of *jus cogens*. *See, e.g.*, DINSTEIN, *supra* note 163, at 104 (recognizing the difficulty in modifying a norm of *jus cogens*).

257. *See* WEISBURD, *supra* note 187, at 319 (suggesting that the UN does not treat as unlawful a broad range of uses of force and only responds to state attempts to subjugate another established state and conquer a portion of its territory); *see also id.* at 117-18 (arguing that "the less stable the international status quo challenged by a resort to arms, the more likely [the UN is] to forego efforts to identify and sanction a lawbreaker, preferring instead to urge the combatants to come to an agreement."); *id.* at 240-41 (contending that the UN tolerates intrusion by dominant powers into the affairs of weak states within their spheres of influence, "especially where such interventions do not alter the formal international status quo . . .").

258. *See* JUNG-GUN KIM & JOHN M. HOWELL, CONFLICT OF INTERNATIONAL

defunct League demonstrated, international legal regimes cannot long survive the continued and unanswered defiance of their rules.[259] Despite low-order successes "more numerous and significant than its critics admit,"[260] the UN is a disappointment to liberalists[261] and is far from immutably enshrined as the guarantor of collective security in the international system.

Ultimately, however, based on empirical evidence that artfully reflects both the practical realities of realism (in allowing great powers a veto over the actions of the Security Council) as well as the aspirations of liberalism (in establishing a collective security system designed to assure peaceful interstate cooperation in economics and security while reducing initiatives to unilateral military adventurism), the UN may be more successful in this mission as a consequence of its hybrid state, as opposed to the classically realist Hague or the staunchly liberalist League. The UN has codified the law of *jus ad bellum* and developed a more comprehensive theory of enforcement that, although it may not yet be capable of implementing, may hint at a more promising future. Even though the UN is incapable of permanently proscribing the use of interstate force and the institutionalization of power in the UN may be imperfect, in this admixture of liberalism and realism may lie the germ for an even more effective international legal regime. As the empirical evidence suggests, the syntheses of institutional knowledge and capacity may well be an accretive process, with each successive formal regime building upon the successes of its predecessors and becoming enriched by the parallel development of conventional and customary laws and norms outside the formal institutional frameworks.

OBLIGATIONS AND STATE INTERESTS 13 (1972) (suggesting that if politically motivated decisions take precedence over objective, legally-defined solutions, member states may be more likely to adjudicate their own cases rather than accept UN decisions).

259. *See id.* at 132 (observing that this non-adherence to Covenant obligations led to the League's "demise" and may also threaten the UN's future existence if these concerns are not addressed).

260. Moore, *supra* note 6, at 816.

261. In the post-Bosnian and post-Rwandan era of international relations, only the most ideologically committed of liberalists, such as David Rochester, still unabashedly tout the virtues of the UN as a manager of contemporary international conflicts. *See, e.g.*, Fidler, *supra* note 5, at 432 (asserting that "there is little to support the argument that the UN is marginal to most modern day conflict.").

IV. INTERPRETATION OF RESULTS

A. CONSISTENCY OF INCIDENCE OF WAR ACROSS TIME

A cursory examination of the international system illustrates the relative continuity of the incidence of war and peace across boundaries of space and time.[262] While there may be a tendency towards periodicity[263] and a skewed distribution,[264] for the past two centuries interstate war frequency has been roughly constant at approximately four to five wars per decade.[265] A slight negative trend in great power wars during the twentieth century[266] has been accompanied by a cor-

262. Empirical analysis offers support to this proposition with a potency unavailable to more qualitative assessments. *See* HOLSTI, *supra* note 101, at 221 (noting that the data "brings home, as perhaps no scholarly discourse can," the fact that with regard to most aspects of dispute behavior "states behave today pretty much as they did in the past."). For a timeless theoretical discussion of the usefulness of quantitative methods in international relations research, see R.L. RUMMEL, DIMENSIONS OF CONFLICT BEHAVIOR WITHIN AND BETWEEN NATIONS (1963); J. DAVID SINGER, QUANTITATIVE INTERNATIONAL POLITICS: INSIGHTS AND EVIDENCE (1968).

263. *See* HOLSTI, *supra* note 101, at 31 (suggesting that the international system may be doomed to experience major wars every fifteen to twenty years as a partial consequence of the failure to learn the sanguinary lessons of the past); *see also* INTERNATIONAL WAR: AN ANTHOLOGY 31 (Melvin Small & J. David Singer eds., 1989) (observing that although war periodicity is vague it is likely related "to the time needed for a generation to 'forget' the last bloody conflict.").

264. Gochman & Maoz, *supra* note 62, at 196.

265. LUARD, *supra* note 11, at 35.

266. A comparison of the war magnitudes in wars per year for the Concert of Europe (.36), the Hague (.52), the League (.28), and the UN (1.16) reveals that, with the exception of the past four decades, there has not been a trend in the direction of an appreciably greater or lesser occurrence of war during or across any of these international legal regimes, particularly with respect to the great powers. Nevertheless, additional research is necessary to determine whether international systemic factors, particularly exponential growth in the number of states in the international system, mask a decline in the incidence and magnitude of war relative to the number of conflict opportunities as measured by the number of state dyads in the international system, each of which is theoretically an opportunity for conflict. *See* Deutsche, *supra* note 101, at 290 (suggesting that relative to the size of the international system, which is five times larger at present than at the conclusion of the Napoleonic Wars, interstate wars are about five times as rare as they were when analyzed in terms of the number of conflict opportunities).

responding general increase in war intensity.[267] Thus, despite the common perception that interstate war is an omnipresent specter, doomed perpetually to haunt mankind as it increases in frequency and savagery, the phenomenon remains relatively rare[268] and in most respects is "neither on the rise [n]or the decline."[269]

Nevertheless, given its tremendous destructiveness, persistence, and capacity in the nuclear age to eradicate the human species,[270] war imposes upon mankind the obligation to task all analytical and functional tools to the project of either its elimination or its regulation. Despite the theoretical divergence as to their utility, international legal regimes have carried with them the hopes for a more normatively attractive and survivable future. Still, it is important to ascertain

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267. Comparing the war intensities in million deaths per year for the Concert of Europe (.03), the Hague (.59), the League (.65), and the UN (.15) suggests a general trend, from which state practice has recently deviated in the direction of increased war intensity. This increased intensity may be attributable in large measure to revolutions in military technology (to include the pacifying advent of nuclear weapons post-1945) or to the growth in the size of the international system rather than the influence of international legal regimes. *See id.* at 292 (suggesting that while there were more deaths attributable to war in the twentieth than in the nineteenth century, after normalization for the numbers of states in the system, the intensity of interstate war become nearly continuous).

268. The "rareness" of war is an expression of the observed incidence of war and the potential incidence of war, which in turn is a function of the number of states in the international system during a given historical period. The smaller the fraction of observed to potential wars, the more rare war is said to be during that period of international relations. Thus, while the international system has been plagued with as many as one hundred wars from the beginning of the Concert of Europe to the present,

> if we calculate the number of nations that have existed since the end of the Napoleonic Wars in 1815 to [the present], and the number of years that each has been a sovereign state, we find that the world *could* have experienced about 16,000 nation-years in which international war was underway. Yet there have been, in those 1[85] years, [approximately] 120 major international wars, averaging about one year in duration and four participants, for a total of "merely" 600 nation-years, or less than 4 percent of the *possible* total.

INTERNATIONAL WAR: AN ANTHOLOGY, *supra* note 263, at v. In sum, although war is the most destructive of human social behaviors, it is mercifully exceptional, since peace is the default state of the human existence.

269. *Id.* at 31.

270. *See supra* note 1 and accompanying text (observing the millions of people who have died in war).

whether these hopes have been misplaced and whether it might be prudent to examine other avenues of approach or, alternatively, to recast the international legal regimes governing interstate war. At this juncture, it is proper to make several concessions in the interest of intellectual honesty.

B. LIMITATIONS OF PRESENT STUDY

The research design employed in the present study, concededly reductionist and potentially overly parsimonious, precludes the offering of assessments regarding the validity of the experimental hypothesis without underscoring that these findings are limited, conditional, and subject to significant revision and even abandonment as a result of future research. For instance, the wars that never occurred simply as a result of the normative or positive influence of the very existence of an international regime on state decision-making will remain forever unknown.[271] Furthermore, much explanatory power will remain untapped, without a more elaborate theory that incorporates each of the levels of analysis, the fundamental processes and causal pathways by which individual decision-makers and governments determine their legal obligations, factor them into strategic calculations, and elect to either uphold or dishonor them. Moreover, dyadic, technological, national-cultural, psychological, issue-area salience, or even stochastic factors may explain more in terms of patterns of international relations than do international legal regimes. Finally, the exclusion of customary international law and judicial opinions from the process of operationalizing the independent variable may also skew the present findings.[272]

In the future, the dawning influence of non-state actors may render amusing the attempts of the present state-centric theory to explain an associative relationship between inter*national* legal regimes and inter*state* war. However, in order to execute the purpose of the present study—to enable the development of protocols for further research by determining regularities and identifying potential associative or dissociative relationships—it is necessary to test the experimental

271. This is perhaps an overstatement. It may be possible to determine a relationship between general periodic disputatiousness and effectiveness of regime intervention in preventing the escalation of such disputes into wars.

272. *See supra* note 80 and accompanying text.

hypothesis that the formal international legal regimes and institutions that have purported to govern the use of interstate force have been, at best, tangential to the genesis, conduct, and conclusion of the phenomenon of war in the international system for the period 1899-1999. To this end, it is useful to determine and compare regime effectiveness coefficients for each international legal regime.

C. REGIME EFFECTIVENESS COEFFICIENTS

Regime effective coefficients are determined by isolating the international legal regime with the lowest regime effectiveness value (in this case the Concert of Europe at 1.02×10^2 deaths per dispute per year), setting that regime effectiveness coefficient at 1.00, and calculating the coefficients for the other international regimes in accordance with the following formula: *Concert of Europe regime effectiveness value/Y regime effectiveness value = 1.00/X, where X = the regime effectiveness coefficient of Y regime.* Table 5 provides the disputatiousness value, war frequency, war magnitude, war intensity, regime effectiveness value, and regime effectiveness coefficient associated with the Concert of Europe, the Hague, the League, and the UN:

TABLE 5

ASSOCIATIONS BY REGIMES

War Incidence Subvariables	Concert of Europe	Hague Conventions	League of Nations	United Nations
Disputatiousness Value	3.2	6	6.7	12.7
War Frequency	36	11	7	51
War Magnitude	0.36	0.52	0.28	1.16
War Intensity	0.032	0.59	0.65	0.15
Regime Effectiveness Value	1.02	46.9	39.1	2.74
Regime Effectiveness Coefficient	1	46	38.3	2.69

Theoretically, and assuming an associative relationship between international legal regimes and interstate war, the lower the regime effectiveness coefficient the more effective the international legal regime was in preventing and regulating interstate war. The ideal international legal regime would proscribe the phenomenon entirely and produce no disputes, no wars, and no deaths, while the most ineptly constructed and maintained international legal regime would yield an infinite number of disputes, wars, and deaths. Consequently, if indeed the theoretical assumption of an associative relationship is not spurious and no important causative or masking variables intervened, the UN—the most effective of twentieth century international legal regimes, with a regime effectiveness coefficient of 2.74—was slightly less successful than the *realpolitik* Concert of Europe—with a regime effectiveness coefficient of 1.00. By this measure, the Hague—with a regime effectiveness coefficient of 46—and the League—with a regime effectiveness coefficient of 38.3—seemed ill-conceived at best and war incubators at worst.[273]

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273. Several scholars are engaged in quantitative research efforts to situate in two dimensional space "all forms of institutionalized cooperation, from the most primitive to the supranational constitutional," with an X-axis plotting "authority" (degree of manifestation of authority of the rule—measured in terms of the relative formality of norms and institutionalization of interests, with formal international treaties and resolutions of international institutions the most formal, and tacit and unspoken norms uttered in speeches, diplomatic letters, and negotiations the least formal) and a Y-axis plotting "control" (degree to which state practice reflects the rule—measured in terms of the frequency, universality, and seriousness of violations of the rule). *See* AREND, *supra* note 81, at 91-99. Numerical scaled values are assigned to the authority and control of the particular legal rules that constitute particular international legal regimes. *See id.* at 95. Rules with high authority and control values (located in the upper right quadrant of the graph), such as the 12 nautical mile territorial sea, are considered legal rules; rules with low authority and control (located in the lower left quadrant), such as most of the International Bill of Rights, are merely aspirations; and, rules located elsewhere on graph are the subject of contestation and important fodder for scholarly examinations of state practice and the development of international legal jurisprudence. *See id.*

Furthermore, international legal regimes can be assessed and compared along a theoretical continuum in terms of the degree of institutionalization of their rules, norms, principles, and decision-making procedures. Type A regimes, such as mutually assured destruction or judicial comity between states, are tacit normative structures without express legal status that result from social interaction and promote cooperation and stable future expectations despite primitive institutionalization. *See* Stone, *supra* note 4, at 471. Type B regimes, characterized as customary international law, exist when a preexisting norm "ripens" into a right or a duty as a

D. WEAK ASSOCIATIVE RELATIONSHIPS

The foregoing would seem to indicate either the general lack of an associative relationship between international legal regimes and the incidence of interstate war or the presence of a weak associative relationship between particular types of international legal regimes and interstate war for the period 1899-1999. This weak associative relationship suggests in turn that: (1) an international legal regime is constructed more with reference to the systemic balance of power and the regulation—rather than the prohibition—of war; and (2) the more it institutionalizes the means of coercion with respect to those principles, whether formally or informally, the more likely it is to have a positive effect upon the amelioration of the intensity, if not the frequency and magnitude, of war.[274] Either of these two tentative

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consequence of the widespread diffusion of the belief that the norm is possessed of legal status; institutionalization is only slightly less primitive. Type C regimes, along with the rights and obligations of states-parties, are the creation of treaty law, which is enforceable only by self-restraint (the interest would-be defectors have in avoiding reputational injury and in securing inclusion in future cooperative ventures) and self-help (punishment of defectors). *See id.* Type D and E regimes are formally institutionalized, autonomous organizations with relatively concrete norms, rules, principles, and decision-making procedures to govern the creation, application, and interpretation of legal rules the purposes of which are to lower information and bargaining costs, independently monitor compliance, resolve disputes, and provide effective enforcement of violations. *See id.* at 472. Type E regimes, akin to world government, "are a form of supranational . . . constitutionalism. In them, metanorms govern not only how legal norms are produced but constrain their content on both the supranational and national levels." *Id.*

Attempting to locate the international legal regimes analyzed in the present study is certainly premature, particularly without tracing, as does Arend, the authority and control of each rule in each legal regime. Ignoring this caveat, this author estimates that the UN and the Concert of Europe would perhaps best be deemed either Type C regimes or at best very weak Type D regimes, whereas the Hague and the League, despite their bases in treaties, are most likely weak Type B or even strong Type A regimes.

274. These tentative conclusions rest heavily upon several contestable suppositions. First, that the cause of the relative success of the Concert of Europe and the UN was the functioning of balance of power systems, which the UN, much more than the League, has been better able to institutionalize in the form of the Security Council. Second, that the institutional and substantive underdevelopment of the Hague precluded any realistic enforcement by that international legal regime. Third, that the formal attempts by the League to prohibit war, an overly idealistic undertaking, and to provide for institutional equality between members were inconsistent with the practical requirements of the international system and thus served as the primary sources of regime failure. In support of these suppositions,

alternative assessments would seem to offer empirical support to the normatively unsatisfying realist IL/IR paradigm, which suggests that anarchy, sovereignty, national interest, state centrism, and power cannot readily be overcome by symbolic declarations in favor of "truth, beauty, goodness, and world community,"[274] and that the use of force will remain a defining characteristic of international relations.[276]

Though they make the intellectual escape into the "comforting seclusion from reality that the pure theory of law once provided"[277] more difficult, the results of the present study would at the same time seem to undermine the gloomy realist prediction that the infusion of international law into the international collective security issue-area automatically increases the probability that "violence, war, defeat, death, and destruction" will ensue.[278] State practice heretofore has translated the substantive content of international legal regimes into

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and in particular that suggesting efforts to prohibit rather than regulate the use of force are overly idealistic, see INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at xviii (noting that the liberalist focus on prohibition rather than the realist determination of which specific uses of force are permissible in various contexts has "led to an odd, oxymoronic quality in international legal discussion about the non-use of force, for all other legal systems are based on and presuppose the use of force and are preeminently concerned with directing its use into avenues that support public order and the major values of the community concerned.").

275. Strange, *supra* note 79, at 342.

276. *See* FAIN, *supra* note 12, at 11 (citing the preeminent international relations scholar Stanley Hoffman, who maintains that "the use of force remains the essence of the international milieu despite all of the efforts of lawyers and statesmen to do away with it, despite the League of Nations and Briand-Kellogg pact and despite the U.N. Charter.").

277. INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at xi.

278. BOYLE, *supra* note 31, at 8. Without offering a fully articulated and testable theory as to the causes of war, it is impossible to identify those potential wars that were prevented by the intervention of international legal regimes. Furthermore, it is beyond the methodological limitations of the present study to test the hypothesis that international legal regimes communicate the solemnity of fundamental regime norms to a wide audience, mobilize support for those norms, and thereby denature disputes while providing the motivation to identify more constructive solutions. *See* INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at xiii. The truth regarding international legal regimes may as yet lie hidden beneath a welter of theoretical and ideological baggage, and international legal regimes may indeed be the last best hope for mankind in the war against war.

language far more suggestive than imperative.[279] While establishing and maintaining international cooperation in security may impose qualitatively different requirements upon the architects of international legal regimes than do other issue-areas in international relations,[280] imperfect intervention to ameliorate the scourge of war is preferable to no intervention at all,[281] and the future holds room not only for realist cynicism[282] but for liberalist optimism.[283] Although the

279. *See* Thomson, *supra* note 106, at 73 (suggesting that while exploitation of the textual ambiguity of international legal regimes may be far more common than willful noncompliance, the imperfections in the written laws of war—by allowing self-interested states to retain freedom of action—may remain the Achilles' heel of international legal regimes). The absence of clear and enforceable rules strongly suggests that much of international law, though still in a process of evolution, remains aspirational. For a detailed discussion of statist exploitation of regime ambiguity and imprecision, see ANTHONY D'AMATO, INTERNATIONAL LAW AND POLITICAL REALITY 174-76 (1995).

280. *See* FRANCIS A. BOYLE, THE FUTURE OF INTERNATIONAL LAW AND AMERICAN FOREIGN POLICY 19 (1989) (offering support to the contention that the qualitative differences between security and non-security issue-areas has terminated attempts at metatheorizing in international relations).

281. *See* Ratner, *supra* note 237, at 73 (citing legal scholars such as W. Michael Reisman and Judge Rosalyn Higgins who reluctantly accept "inconsistent enforcement of core norms backed by powerful states as preferable to a least common denominator of no enforcement").

282. Cynicism as to the potential for effective legal intervention in international relations comes all too readily to the realist—after all, war is by definition an exercise in violent coercion characterized by the disintegration of legal restraints. *See* INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at xi (citing Stanley Hoffman, who suggests that realists are quick to stress "the way in which legal claims are shaped to support any position a state deems useful or necessary on non-legal grounds" and to identify the "combination of cacophony and silence that characterizes international law as a system of world public order."); *see also id.* at xviii (arguing that the "tragedy of international law," which "shows on its body of rules all the scars inflicted by the international state of war," is "that of a double divorce: first, between the old liberal dream of a world ruled by law, and the realities of an international system of multiple mini-dramas that always threaten to become major catastrophes; second, between the old dream and the new [realist-imposed] requirements of moderation . . . ."); WEISBURD, *supra* note 187, at 322 (suggesting that so long as states are reluctant to cede sovereign freedom of action, the "contributions law can make toward controlling international violence will necessarily be modest"). Not only do the hoary principles of state sovereignty and systemic anarchy blind realists to the possibility that states generally satisfied with the status quo can be induced toward cooperation in the security issue-area, but the prospects of Malthusian population pressures, environmental threats, cultural heterogeneity, and increasing maldistributions of wealth

presence of international law in international relations may not be uniformly manifest as to time, geography, or issue-area, the question is not whether international legal regimes are associated with the incidence of interstate war. Rather, scholars and policymakers should ask the questions of how, when, why, and under what circumstances[284] international legal regimes are associated with the inci-

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and power convince many realists, irrespective of whatever evidence may be marshalled in support of alternative theoretical and epistemological paradigms, that "the affairs of nations and the collisions of interests, passions, and ideals between peoples will be decided, as they have been so often in the past, by the implements of war and those who wield them." Orme, *supra* note 229, at 471. For such pessimists, the end of war can only be the byproduct of human evolution and international legal regimes, and institutions will forever remain "elaborate facades of cooperation that do nothing to limit effectively the sovereignty of states with regard to international peace and security." Fidler, *supra* note 5, at 436.

283. From a broad perspective, liberalists note that while states occasionally violate the legal rules that constitute international legal regimes, the following observations generally hold true: (1) states do not form and join regimes lightly; (2) states concede the existence of formal international legal regimes with the legal right to enforce rules and sanction violators; (3) compliance with rules is frequently the most efficient option, and regimes may create norms and modify behaviors even in the absence of strict adherence; and, (4) states generally adhere to the widely internalized norm of *pacta sunt servanda* in most issue-areas of international relations. *See* AREND, *supra* note 81, at 192 (demonstrating that the very existence of legal rules indicates common interests between states).

Similarly, several realists, including Hedley Bull, recognize that common interests and values have induced states to join together in recognition of legal obligations to adhere to certain rules and to accept the competence of certain institutions to prescribe certain aspects of their international relations, including war. *See id.* at 191. The following paean to the UN, however, is perhaps the finest distillation and expression of liberalist optimism regarding the future of international legal regimes governing the use of force:

> International legal rules, procedures and organizations are more visible and arguably more effective than at any time since 1945. If the UN cannot accomplish everything, it once again represents a significant repository of hopes for a better world. And even as its current failures are tabulated, from Yugoslavia to the early weeks and then months of the Somalia famine, the almost-universal response is to find ways to strengthen it. The resurgence of rules and procedures in the service of an organized international order is the legacy of all wars, hot or cold . . . As Thomas Franck proclaims, we are finally in a 'post-ontological' era.

Slaughter Burley, *supra* note 56, at 205.

284. Heretofore, consistent with their liberalist pedigree, most scholars concerned with the problem of the use of interstate force have focused their efforts upon its prohibition, which has

dence of interstate war, and what modifications or additions can be made to international legal regimes, in order to fashion a more peaceful, prosperous, and ultimately just[285] international order.[286]

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led to an odd, oxymoronic quality in international legal discussion about the non-use of force, for all other legal systems are based on and presuppose the use of force and are preeminently concerned with directing its use into avenues that support public order and the major values of the community concerned. The continuing problem for the international legal system, whether it develops techniques for using force exclusively in a centralized fashion (a development which still seems remote) or continues to tolerate unilateral uses of force of certain types, will be how to determine *which uses* of coercion, at *which levels*, will be appropriate for *which cases* and in *which contexts*.

W. Michael Reisman, *Allocating Competences to Use Coercion in the Post-Cold War World: Practices, Conditions, and Prospects*, *in* LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 225, 44-45.

Still, while liberalists may need to temper their expectations, realists may be well advised to expand their intellectual horizons to admit of the possibility that international legal regimes may indeed "drive a wedge between power and outcomes." Kingsbury, *supra* note 48, at 369.

285. Heretofore, international legal regimes pertaining to the use of force have been much more concerned with the preservation of order than with the attainment of justice. This policy myopia fails to adopt the long-range vision necessary to secure the interests not only of the have-nots—whose struggles against poverty, discrimination, maldistributions of wealth, sequelae of neocolonialism and dependency, and structured hopelessness are frequent war triggers—but also of the haves whose interests are closely tied to the maintenance of international systemic stability. *See* William Bradford, *What America Has Written: Washing Our Hands in the Balkans with Dayton and the Kosovo Peace Plan*, __ COL. J.E. EUR. L. __ (forthcoming 2001) (noting that several recent conflicts, spawned when established states asserted the legal right to suppress ethnic minority groups exercising claims to self-determination or when states intervened to end violations of human rights so severe that colorable claims were advanced that such violations amounted to an international crime and a threat to international peace and security, have challenged regional balances of power and threatened to derail systemic order). Failure to resolve longstanding economic, political, cultural, and ethnic grievances, coupled with failures to codify and promulgate principles to guide the exercise of the basic right to self-determination and to identify appropriate conditions under which human rights will be permitted to trump state sovereignty, will surely generate and enflame future crises; wars may be especially probable in states where sovereignty is tenuous or ambiguous and therefore relatively less difficult for aggrieved parties to undermine. *See* LUARD, *supra* note 11, at 40-42. Fortunately, work is underway to address these topics. *See, e.g.*, Barbara Harff, *Humanitarian Intervention: At Issue*, *in* INTERNATIONAL INTERVENTION: NEW NORMS IN THE POST-COLD WAR ERA? 61 (Peter Wallensteen ed., 1997); Kenneth W. Abbott, *International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts*, 93 AM. J. INT'L L. 361 (1999) (suggesting that international relations

E. NEED FOR INTERDISCIPLINARY RESEARCH AND INTER-PARADIGMATIC DIALECTIC

Both the liberalist and realist IL/IR paradigms have much to offer by way of answers to the preceding questions.[287] If preconceived theoretical notions yield to concerted efforts to bridge the theoretical divide as they must,[288] realism and liberalism, together with interna-

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scholarship contains two lessons: issue-areas need to be re-examined and most regimes are modified by partial legalization of rules and procedures). For a more comprehensive treatment of the requirements of a just international order, see JANNA THOMPSON, JUSTICE AND WORLD ORDER: A PHILOSOPHICAL INQUIRY (1992).

286. The highway between the present and such a future will not be clearly marked, well-illuminated, or well-policed, and efforts to undergird force with law—already facing towering practical obstacles in the form of state sovereignty, systemic anarchy, and their own blemished prehistory—will be besieged by more than their due ration of theoretical criticism. Scholars of diverse theoretical backgrounds will continue to contend, as did Boyle, that the "irrelevance of international law will persist until the world returns to the conditions of relatively simple placidity that characterized its formative period." Boyle, *supra* note 29, at 194. Others will argue that, given the relative immutability of human nature, the past will be but a prologue and international legal regimes will remain epiphenomenal so long as human attitudes regarding the use of force remain untransformed. *See* OSGOOD & TUCKER, *supra* note 20, at 359. Still others, convinced that it is the international system itself which must evolve, will "suggest a *downplaying* of formal law in the realm of peace-and-war issues, and an *upgrading* of more flexible techniques, until the system has become less fierce." INTERNATIONAL LAW AND POLITICAL CRISIS: AN ANALYTIC CASEBOOK, *supra* note 53, at xviii. In short, the self-selected architects of new and improved international legal regimes can expect these ponderous, even onerous, burdens to impede them on what will surely be a challenging quest.

287. Less ambitious theories may lead a researcher in the direction of a specific paradigmatic orientation. *See* Bhala, *supra* note 28, at 781 (suggesting that "[r]ealism might be better suited for national security affairs, whereas [liberalism] might be appropriate for international economic matters"). However, enriched explanations of more general theories of international relations and international law may of necessity require inputs from each paradigm. *See* HENKIN, *supra* note 51, at 269 (contending that "'[r]ealists' who do not recognize the uses and the force of law are not realistic" and "'[i]dealists' who do not recognize the law's limitations are largely irrelevant to the world that is"). With regard to investigations of the associative relationship of international legal regimes and the incidence of interstate force, realism and liberalism are, in many important respects, opposite faces of the same analytical coin.

288. *See* AREND, *supra* note 81, at 196-97 (contending that in an era of rapid future change characterized by the increasing importance of non-state actors and the contestation between divergent normative systems, the need for interdiscipli-

tional law and international relations, can benefit from sharing in the journey across what, for too much of their histories, has been a bridge too far.

V. DIRECTIONS FOR FUTURE RESEARCH

A. TRACE CAUSAL MICROPATHWAYS BETWEEN RULES AND BEHAVIORS

A precise understanding of the associative relationship between international legal regimes and the phenomenon of interstate war is as yet beyond our reach, and it is as yet impossible to state with certainty that security is an area of international relations susceptible to positive human control by way of international regimes and institutions. It thus falls to future empirical research and practice to clarify and brighten the picture emerging from past[289] and present research.[290]

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nary and intertheoretical cooperation will be even greater than at present if there is to be an accurate understanding of an even more complex international system); *see also* ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS xi (1995) (providing for an understanding of the actions of states, officials, international organizations, and other actors when they try to implement regulatory treaties); Robert J. Beck, *International Law and International Relations: The Prospects for Interdisciplinary Collaboration*, 1 J. INT'L LEGAL STUD. 119, 119-22 (1995) (suggesting that interdisciplinary collaboration between international law and international relations is sine qua non if a more peaceful era of international relations is to be established).

289. For examples of other empirical studies of the relationship between international law and international relations in interstate crisis and conflict settings, see ABRAM CHAYES, THE CUBAN MISSILE CRISIS (1974); THOMAS EHRLICH, CYPRUS, 1958-1967: INTERNATIONAL CRISES AND THE ROLE OF LAW (1974); ROGER FISHER, POINTS OF CHOICE (1978).

290. The present study will be followed by subsequent reiterations that will include quasi-experimental politico-military-legal simulation research with human subjects at Harvard University. For an introduction to simulation methodology generally and as applied to social science research, see HAROLD GUETZKOW, SIMULATION IN INTERNATIONAL RELATIONS (1963); SIMULATION IN THE STUDY OF POLITICS (William D. Coplin ed., 1968); Lincoln P. Bloomfield & Norman J. Padelford, *Three Experiments in Political Gaming*, 53 AM. POL. SCI. REV. 1105 (1980); EYTAN GILBOA, SIMULATION OF CONFLICT AND CONFLICT RESOLUTION IN THE MIDDLE EAST (1980); SIMULATED INTERNATIONAL PROCESSES: THEORIES AND RESEARCH IN GLOBAL MODELING (Harold Guetzkow & Joseph J. Valadez eds., 1981); THE GLOBUS MODEL: COMPUTER SIMULATION OF WORLDWIDE POLITICAL AND ECONOMIC DEVELOPMENTS (Stuart Bremer ed., 1987).

More fully articulated and generalized theories will require the tracing of the causal micropathways between each substantive rule of each regime and each action or inaction taken in response to a dispute. Thus, researchers must cast the analytical net more widely to capture the more informal sources and processes that create, sustain, and undermine international legal regimes.[291]

B. ENRICHED THEORIES AT ALL LEVELS OF ANALYSIS

Investigation at each level of analysis will be necessary, particularly as the salience of states declines and sub-national actors proliferate.[292] Research at the level of the international system will aid in determining whether the frequency and intensity of war co-vary with

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291. The present study has restricted its definition of international legal regimes to formal sources, in particular treaties, in operationalizing the independent variable. *See supra* notes 95-98 and accompanying text. However, the insights of the "New Haven School," a "policy-oriented jurisprudence which eschews formal methods of rule-searching in favor of view of international law as a process of decision-making by which various actors clarify and implement their common interests in accordance with their expectations," counsels for the operationalization of variables much more broadly than can be done through mere analysis of formal legal documents. Steven R. Ratner & Anne-Marie Slaughter, *Appraising the Methods of International Law: A Prospectus for Readers*, 93 AM. J. INT'L L. 291, 292-95 (1999).

292. The salience of the state as the primary actor in international relations and international law has been in gradual decline since the end of World War II, and it is no longer "possible to understand the world through categories of modern theories of international relations" without extending the limits of the theoretical imagination "beyond the current boundaries of static fragmentation" to allow for consideration of "other spatiotemporal options." R.B.J. WALKER, INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY iv (1993) (on file with author). This venture, while underway, must proceed apace, for the capacity of non-state actors to generate and inhibit patterns of cooperation is accelerating. *See* J. Samuel Barkin & Bruce Cronin, *The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations*, 49 INT'L. ORG. 107, 109 (1994) (describing the process by which the increasing salience of non-state actors raises the question whether international law, a field erected solidly upon the principle of state sovereignty, is in need of revision). As Slaughter underscores, practitioners and scholars of international relations and international law have immediate need of a "theoretical framework that takes account of increasing evidence of the importance and impact of so many factors excluded from the reigning model(s): individuals, corporations, nongovernmental organizations of every stripe, political and economic ideology, ideas, interests, identities and interdependence." Slaughter Burley, *supra* note 56, at 227.

changes in the constellation and distribution of (nuclear)[293] power[294] or with the ebb and flow of a war/peace cycle,[295] rather than with the substance, membership, and enforceability of legal regimes. Regional and dyadic level analyses will shed light on whether the likelihood that states will engage in the use of force is associated with specific issue-areas.[296] The role of state idiosyncrasies also bears scrutiny: bellicose states, or states that are otherwise proficient in war,[297] may be more prone to engage in conflict and war, whatever intervention might be attempted by international legal regimes, than

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293. *See* OSGOOD & TUCKER, *supra* note 20, at 195 (suggesting that the advent of nuclear weapons have precipitated a fundamental change in human attitudes toward war, which is now seen as a senseless practice due to its sheer destructiveness); *see also* Orme, *supra* note 229, at 457 (suggesting that the nuclear peace has terminated the search for glory through war). *But see* BLAINEY, *supra* note 11, at 275 (noting that in at least six post-World War II disputes a non-nuclear state was not deterred from engaging in war with a nuclear adversary).

294. More research is necessary to determine whether, as Singer and Diehl suggest, an increase in the number of states in the international system correlates with an increase in war frequency. *See* MEASURING THE CORRELATES OF WAR, *supra* note 62, at 279. Similarly, it is necessary to investigate the intuitively obvious proposition that improvements in weapons technology, and in particular the proliferation of nuclear weapons, decreases the frequency and duration of wars while increasing their intensity. Moreover, it will be useful to study whether and to what extent hegemonic states exert controlling influence over patterns of international relations and international legal transformation.

295. *See* BLAINEY, *supra* note 11, at 272 (suggesting that for the past two centuries it is the rule for a period of peace to follow a period of major war).

296. *See* Golden, *supra* note 8, at 213 (indicating that distinctions pertaining to kinds of law must be first noted: "the question of forceful violation or domination is irrelevant").

297. *See* INTERNATIONAL WAR: AN ANTHOLOGY, *supra* note 263, at 33-36 (suggesting that states with a record of great military achievement may be more likely to initiate and win wars than are those states whose experience with war has been much more sobering); *see also* Deutsch, *supra* note 101, at 292-93 (asserting that for states highly proficient at the art and science of war, and for the initiators as opposed to the targets of belligerence, the use of interstate force may be boundedly rational); GELLER & SINGER, *supra* note 113 , at 1 (noting that seventy-five of these interstate wars led to tens of millions of deaths). Several other works offer much fodder for future research at the level of the state. *See, e.g.*, BRUCE BUENO DE MESQUITA & DAVID LALMAN, WAR AND REASON: DOMESTIC AND INTERNATIONAL IMPERATIVES xii (1992) (proposing solutions to various "empirical puzzles about the behavior of democracies toward one another and toward nondemocratic states").

are liberal democracies.[298] Perhaps most importantly, cognitive re-

298. Proponents of the "democratic peace" present evidence in support of the proposition that liberal democratic states are less likely to resort to the use of force against other states, and particularly less likely to engage in "fratricide" against sister democracies. *See, e.g.*, RUDY RUMMEL & BRUCE RUSSET, GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD (1993) (surveying the notion of democratic peace). If true, the solution to the problem of interstate war may be found less in the content and enforcement of international legal regimes than in the proliferation of liberal democracy. Indeed, for the elites of many undemocratic regimes, war may in fact be a procedurally rational proposition so long as objectives do not outstrip capabilities and target interests and capacities are not misperceived. To remove incentives for such regimes to engage in interstate force it may be necessary to bolster current informal deterrence mechanisms with formal institutions built upon power—a realist formula. *See, e.g.*, Moore, *supra* note 6, at 840-41 (suggesting that the "missing link, in synergy with the democratic peace, explaining major war, is deterrence, or more accurately, the system-wide absence of effective deterrence, in settings of major aggressive attack by non-democratic regimes.") Such a proposal is exemplary of the dawning awareness that solutions to contemporary international problems may require input from both liberalist and realist paradigms.

However, much of the empirical support for the democratic peace evaporates when "liberal democracy" is operationalized more narrowly to prevent inclusion of states whose liberal and democratic credentials are less than convincing. *See, e.g.*, LUARD, *supra* note 11, at 40 (recognizing the pervasiveness of expansive wars despite the end of colonial conquests); HANS KOCHLER, DEMOCRACY AND THE INTERNATIONAL RULE OF LAW: PROPOSITIONS FOR AN ALTERNATIVE WORLD ORDER: SELECTED PAPERS PUBLISHED ON THE OCCASION OF THE FIFTIETH ANNIVERSARY OF THE UNITED NATIONS v (1995) (evaluating democracy in the context of its universality, foreign policy, and human rights); Spencer Weart, *Why They Don't Fight*, U.S. INST. PEACE IN BRIEF 1-2 (Nov. 1993). Moreover, it appears intuitively apparent that systemic heterogeneity in terms of distinct national, cultural, social, and historical perspectives can complicate the constitution of international legal regimes. *But see* MITRANY, *supra* note 26, at 205 (noting that the functional approach would not contradict the sentiment of nationality or sovereignty). In sum, for many observers the static-level of analysis can bear much more research. For some guidance regarding general research at the static-level of analysis, see William D. Coplin, *International Law and Assumptions About the State System*, 17 WORLD POL. 615 (1965); Kenneth W. Abbott & Duncan Snidal, *Why States Act through Formal International Organizations*, 42 J. CONFLICT RES. 3 (1998).

Still, legal moralists contend that the nature of the state is irrelevant to the origin and resolution of interstate disputes and that domestic-level issues ought not be projected into the arena of the international system; from this philosophical standpoint, the proper formal rules, in conjunction with collective sanctions, are enough to prevent power alone from determining outcomes. For a discussion of legal moralism, see Bhala, *supra* note 28, at 754. To be sure, whether and to what extent the nature of domestic regimes and politics influence interstate conduct vis-a-vis war

search at the individual level of analysis is essential if we are to determine why decisional elites obey rules, which rules they obey, and what incentives enhance their innate propensities to follow rules.[299]

C. POTENTIAL PROPOSALS FOR REGIME MODIFICATION

The phenomenon of war is likely to remain too much with us un-

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are questions to be determined in subsequent iterations.

299. According to the "international legal process" school developed by Chayes, Ehrlich, and Lowenfeld at Harvard University in the 1960s, individual action mediates causal mechanisms and qualifies associative relationships in the nexus between international legal regimes and the incidence of interstate war. *See* Ratner & Slaughter, *supra* note 291, at 292-93. In essence, individuals, rather than states, make decisions, and thus compliance with, as well as violation of, international legal regimes are the partial expressions of the unique political psychologies of human beings. Some scholars believe individual decision-makers comply with the dictates of international legal regimes in the hope that compliance will trigger reciprocity; others suggest that compliance is the response to fear of adverse consequences, whether military, political, economic, or judicial. *See* Michael Byers, *Response: Taking the Law Out of International Law: A Critique of the "Iterative Perspective"*, 38 HARV. INT'L L.J. 201, 203 (1997). Several commentators suspect that compliance is effectuated by reputation or by the perception that compliance, rather than defection, presents enhanced prospects of securing interests. *See* Keohane, *supra* note 24, at 494-98. Furthermore, an important strain of compliance theory suggests that it is acceptance of the process by which an international legal regime makes decisions and by which its norms are communicated, more so than satisfaction with the specific decisions emerging from that process, which motivates individual decisions to conform the conduct of their states with those regimes. *See* Byers, *supra* note 299, at 203. Important aspects of that process include opportunities to engage in mediation, arbitration, and negotiation in order to "cool" the dispute and constructively resolve tension, and important norms include a commitment to nonviolence. *See* BOYLE, *supra* note 280, at 24-27. Although there may be no rational explanations for certain foreign policy choices, such as the decision to launch a state into an aggressive interstate war, it is essential to trace the pathways whereby such decisions are reached and executed in the international system, as well as to identify the norms, values, cultural traits, and beliefs which motivate decisions, if law is to be constructed in such a fashion as to constrain decision-makers, forestall certain decisions, and thereby exert a peaceful influence upon the course of international relations. Absent an identification of the individual decision-making process by which the normative features of international legal regimes translate into state behaviors in the international system, it will remain difficult, if not impossible, to develop and test theories of compliance that have adequate explanatory and predictive power. For a more thorough examination of the methodological difficulties inherent in the study of state compliance with international legal regimes, see Kingsbury, *supra* note 48, at 369. For a constructivist insight into the processes by which norms arise, spread, and decline over time, see Florini, *supra* note 46, at 366-75.

less and until the evolutionary course of human biology renders mankind more peaceful or all its underlying causes are magically suppressed.[300] It may be possible, however, even in the security issue-area, for international lawyers and political scientists to collaborate in the design of legal regimes and institutions that better reflect and serve the norms and interests of state members and thereby generate broader and deeper motivations toward compliance than have legal regimes and institutions heretofore.[301] Yet, as Holsti understands, "sometimes efforts to resolve problems can also make them worse. In international relations, the way a peace is ordered may in fact sow the seeds of new conflicts."[302] Avoidance of such a fate will require that scholars discard epistemological and ontological assumptions,[303] develop and test theories of cooperation and conflict, and undertake a systematic and precise approach[304] to regime deconstruction, modifi-

300. At least one scholar has suggested that the permanent banishment of interstate war on earth and the development of serious international organization may require as a precondition the introduction of a common extraterrestrial enemy sufficiently threatening that all nations will agree to unify to accomplish its defeat. *See, e.g.*, Richard A. Falk, *Law in Future International Systems*, *in* INTERNATIONAL SECURITY SYSTEMS: CONCEPTS AND MODELS OF WORLD ORDER 177 (Richard B. Gay ed., 1969) (setting forth the idea that even if proven false, a threat from peace might facilitate global organization).

301. *See* Keohane, *supra* note 24, at 501 (suggesting a need for interest-alignment with norms among international lawyers).

302. HOLSTI, *supra* note 101, at xv.

303. Regime deconstruction and reconstruction is a particularly fertile domain for intertheoretical and interdisciplinary cooperation.

> This research . . . does not presuppose a commitment to a particular set of assumptions about the international world or to any particular epistemological or ontological orientation. Realists might explore how best to assure that international institutions remain effective instruments through which powerful states maintain the balance of power. Institutionalists might focus on mechanisms that reduce the opportunity for cheating, such as monitoring, the use of hostages and bonds, and the other methods of making credible commitments to support exchange . . . . Liberals might focus on design features than enhance and shape the links between the institution and domestic institutions and interest groups.

Anne-Marie Slaughter et al., *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L L. 367, 386 (1998).

304. *See id.* at 383-84 (noting that, although much discussion as to the modification of international collective security systems is general and abstract in nature,

cation, and reconstitution that selectively incorporates the keenest insights of both liberalism and realism and identifies important variables at each level of analysis.[305]

Although almost an infinite number of regime designs are possible, a successful regime must develop legitimacy, deter and sanction violations of norms and principles, institute conflict-resolving procedures and institutions, capture a consensus as to the extent to which war is to be regulated or prescribed, and anticipate, if not proactively address, issues likely to generate future conflicts.[306] A number of scholars suggest that the present universal international legal regime established in the form of the UN might be augmented or even replaced with a regional collective security system, wherein regionally- and culturally-specific norms would be permitted operation within respective spheres of origin and in which regional hegemony would be descriptive of the political system.[307] Others, indicating that the

researchers in the IL/IR tradition, endowed with detailed knowledge of law and legal institutions as well as the insights of international relations theories, need accept neither limitation in their attempts to devise more efficient and practically effective legal regimes).

305. *See id.* at 387 (noting how "insights from game theory, institutional economics, decision theory, prospect theory, social psychology, and negotiation analysis" can further inform this inquiry).

306. *See* HOLSTI, *supra* note 101, at 336-39 (outlining suggested, yet arbitrary, requirements needed to sustain common purposes). It may be proper to envision regimes as organic creations which evolve or devolve over time and proceed either toward greater explicitness, legitimacy, procedural and normative precision and articulation, actor compliance, and formal institutionalization, or toward increased uncertainty as to rules and norms, divergence of actor expectations, rule violations, and uncertainty as to actor and institutional behaviors and decisions. For a brief introduction to the process of regime evolution and devolution, see Stephen J. Toope & Jutta Brunnee, *Freshwater Regimes: The Mandate of the International Joint Commission*, 15 ARIZ. J. INT'L & COMP. L. REV. 273, 273 (1998). As such, regime architects must be sure to endow their creations with rules, norms, principles, and decision-making procedures that enhance, rather than undermine, their potential for successful maturation and development; this task, however, is far simpler to establish on paper than to actualize in the international system.

307. Proponents of regionalism suggest that regional organizations, if endowed with increased legal authority to operate independently within a particular geographic sphere and if augmented by increased national contributions of military forces to standing regional rapid reaction units, would be more swift and more effective in their responses to international crises and would thus prevent wars sparked by crises such as mass migrations, spillover fighting, and extensive human rights violations that the UN has heretofore been unable or unwilling to address.

lack of enforcement is the primary shortcoming of international legal regimes generally,[308] contend that more robust enforcement mechanisms, such as Article 43 agreements are needed to bolster the vitality and credibility of the UN.[309] Still others suggest that the norm proscribing force be retailored in the direction of a more efficient and

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See, e.g., Alan K. Henrikson, *The United Nations and Regional Organizations: "King-Links" of a "Global Chain"*, 7 DUKE J. COMP. & INT'L L. 35, 65 (1996) (discussing such proposals currently under exploration with various international and regional organizations). However, some fear that regional organizations would be no less susceptible to political paralysis or the influence of hegemonic states than have been global security organizations. *See* Christopher J. Borgen, *The Theory And Practice of Regional Organization Intervention in Civil Wars*, 26 INT'L L. & POL. 797, 803-21 (1994) (indicating that regional organizations are subject to regional cultural biases, the disruptive influence of predatory regional hegemons, and political infighting between members). Others fear that regional organizations so empowered would be prone to act *ultra vires*, without UN approval for their interventions, rather than on the basis of policy coordination with the UN as per Chapter VIII, and would in so doing upset or even sabotage the parallel global security regime as some claim NATO was on the verge of doing in Kosovo. *See* Bradford, *supra* note 285. For a general history of the debate between globalists and regionalists, see EDVARD HAMBRO ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 354 (3d. ed. 1969).

308. *See* Ratner, *supra* note 237, at 69 (noting that compliance or the lack thereof is for many the central feature that distinguishes international law from domestic law, and for such critics international law will remain law "in name only" for so long as the world is "without mechanisms to bring transgressors into line"); *see also* Toope & Brunnee, *supra* note 306, at 273 (stressing that whereas some international legal norms are binding, others are "merely influential", suggesting that differences between categories of norms, i.e. between security-related and non-security-based norms, are relevant to the broader analysis of international legal regimes).

309. Although the framers of the UN Charter envisioned that the great powers would contribute national forces to a standing force available on call to the Security Council, this became and has remained an intensely political question. *See* OSCAR SCHACTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 394 (1991) (stating, "Article 43 requires that the special agreements be subject to ratification by the signatory states in accordance with their respective constitutional processes"). In recent years, former UN Secretary General Boutros-Ghali has suggested that rather than transfer assignment of national forces to the Security Council, a formula might be devised whereby states would temporarily assign operational control (a less rigid form of military command in which the contributing member maintains certain strategic command prerogatives) to the Security Council; a dual-key arrangement would require the concurrence of both the Security Council and the contributing member to initiate military actions. *See* Henrikson, *supra* note 307, at 68-69. However, the failure of the dual-key formula in Bosnia shelved discussions of Article 43 agreements once again. *See* Bradford, *supra* note 285, at 91.

reliable system of conflict management and peace enforcement to include the possibility of a global conference wherein claims for self-determination might be advanced as part of negotiated, mediated, or adjudicated settlements. Such a proposal would require, potentially, the addition of new members to the UN and to the Security Council,[310] as well as enhanced UN commitments to peacekeeping and peace enforcement operations, with concomitant member-state commitments to the same.[311] Such modifications might indeed ameliorate the frequency, magnitude, and intensity of interstate, as well as intrastate, war.

D. A MILLENNIAL CRUSADE TOWARDS A MORE PEACEFUL AND JUST INTERNATIONAL ORDER

At the dawn of a millennium as yet unsullied by the horrors of war,[312] the metaquestion at the epicenter of the intersection of the international relations and international legal academies is, "How can we achieve the formal and informal preconditions for the constitution, maintenance, and operation of a robust international legal regime that governs and limits the use of interstate force while also permitting the full flowering of justice?" This question remains un-

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310. *See* Fidler, *supra* note 5, at 433-41 (noting that the additions of new members, whether to the UN generally or to the Security Council, might geometrically increase both the difficulty in maintaining global and regional balances of power as well as consensus within the Security Council, without significantly increasing the enforcement capacity of the UN). Still, the addition to the Security Council of members from the developing world might increase the legitimacy of the UN and reduce North-South tensions—an important underlying cause of international disputes and wars.

311. Peacekeeping, though a passive use of force, has heretofore been conducted ad hoc with underequipped and undertrained force on the basis of uncertain legal authority and uncertain budgets.

312. The millennial spirit may well have launched a crusade in the fields of international relations and international law with a more orderly, peaceful, and just world the Jerusalem after which scholarly knights will quest. For the first work to make reference to the millennium as an opportunity for renewed efforts, see WORLD ORDER FOR A NEW MILLENNIUM: POLITICAL, CULTURAL AND SPIRITUAL APPROACHES TO BUILDING PEACE xxi (A. Walter Dorn ed., 1999) (signifying the first collection of papers attempting to make reference to the millennium as an opportunity for renewed efforts, as compiled from the conference *The Evolution of World Order: Building a Foundation for Peace in the Third Millennium*, held in Toronto June 6-8, 1997).

satisfactorily answered, despite the best efforts of the present study and the work of those upon which it builds. Compounding the problems of yesterday will be new and more diffuse challenges to the objective of an ordered and just international system that gross human rights violations, ethnonationalism and attendant struggles for self-determination, structural problems in the economic and democratic development of the South, environmental degradation, and the proliferation of weapons of mass destruction will pose.[313] However, if the present study has been more successful in raising questions than in answering them, provided it has contributed insight as to the directions for additional research that will clarify and brighten the emerging picture,[314] it has succeeded in nurturing the hope for a more peaceful global future which persons of all theoretical and vocational commitments certainly share.

313. For an in-depth discussion of the post-Cold War generation of global security threats, see MICHAEL T. KLARE & DANIEL C. THOMAS, WORLD SECURITY: CHALLENGES FOR A NEW CENTURY (1994).

314. Scholarly focus on the concept "international governance," defined as "formal and informal bundles of rules, roles, and relationships that define and regulate the social practices of states and nonstate actors in international affairs," should lend significant individual and institutional energies to continued research in this intersection of law and politics. For a closer treatment of the concept of international governance, see David Kennedy, *New Approaches to Comparative Law: Comparativism and International Governance*, 1997 UTAH L. REV. 545 (1997). For a more detailed discussion of the prospects for interdisciplinary research in the issue-area of international governance, see Slaughter et al., *supra* note 303, at 370-75 (suggesting potential future research projects, including diagnosing and resolving contemporary problems of ethnic conflict and international security and analyzing the structure and function of existing international legal regimes and institutions as a precursor to their deconstruction and reconstruction).